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CONFORMED COPY  
 OF ORIGINAL FILED  
 Los Angeles Superior Court

JUN 01 2016

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13  
 14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES

16 CALIFORNIA CHARTER SCHOOLS  
 ASSOCIATION, a not-for-profit California  
 17 Corporation,

18 Plaintiff,

19 v.

20 LOS ANGELES UNIFIED SCHOOL DISTRICT,  
 BOARD OF EDUCATION OF THE LOS  
 21 ANGELES UNIFIED SCHOOL DISTRICT, and  
 RAMON C. CORTINES, in his capacity as  
 22 Superintendent of Schools,

23 Defendants.

CASE NO. BC438336

**CORRECTED FIRST AMENDED AND  
 SUPPLEMENTAL COMPLAINT FOR  
 BREACH OF SETTLEMENT  
 AGREEMENT AND VIOLATION OF  
 PROPOSITION 39 SEEKING SPECIFIC  
 PERFORMANCE, PERMANENT  
 INJUNCTION, APPOINTMENT OF  
 SPECIAL MASTER AND  
 DECLARATORY RELIEF**

Assigned To: Honorable Terry A. Green,  
 Department 14

Action Filed: May 24, 2010  
 Trial Date: N/A

1 Plaintiff California Charter Schools Association (“CCSA”) alleges as follows:

2 I.

3 **INTRODUCTION AND SUMMARY OF ACTION**

4 1. CCSA is a nonprofit public charter school membership and professional  
5 organization. CCSA’s member schools are public schools, many operated as or by nonprofit  
6 entities, dedicated to innovation and educating public school students more effectively than  
7 district-run schools have done. CCSA advances the charter school movement by providing state  
8 and local advocacy, leadership on school quality, and operational and support services to its  
9 member schools, and by protecting the legal rights of charter public schools and the students that  
10 attend charter public schools, including facilities equity. To protect its members’ legal rights and  
11 needs, CCSA monitors and seeks to enforce school district compliance with Prop. 39 statewide  
12 throughout California. CCSA and its membership across California, and especially within the  
13 boundaries of the Los Angeles Unified School District (“LAUSD”), are deeply concerned by  
14 LAUSD’s policies and practices of violating Prop. 39.

15 2. There are over 1,200 public charter schools in the State of California serving over  
16 572,000 California public charter school students.

17 3. About sixty-five percent (65%) of California’s public charter schools are CCSA  
18 members.

19 4. Currently, there are about 292 public charter schools in LAUSD, of which about  
20 227 (78%) are CCSA members.

21 5. Nearly 24% of all public school students in LAUSD’s area attend charter schools,  
22 making charter schools an integral part of the public education system in LAUSD’s boundaries.

23 6. The vast majority of students enrolled at public charter schools within LAUSD’s  
24 boundaries are students of color. For example, data taken from the California Department of  
25 Education (“CDE”), California Basic Educational Data System (“CBEDS”) reported that charter  
26 schools within the LAUSD area educated approximately 57,904 public school students in 2008-  
27 2009. Of those 57,904 charter school students, approximately 33,604 (58%) were identified as  
28 Latino students and about 11,145 (19%) were identified as African-American students.

1 Combined, Latino and African-American charter school students made up about 77% of the total  
2 charter school population in LAUSD's boundaries. Clearly, public charter schools in LAUSD  
3 are diverse places of learning.

4 7. Moreover, public charter schools have been very successful in educating public  
5 school students within LAUSD's boundaries and across California. For example, the CDE's  
6 2009 Academic Performance Index ("API") Growth File reported that the growth score for  
7 African-American charter school students in the LAUSD area was 47 points higher (709 vs. 662)  
8 than the growth score obtained by African-American students attending LAUSD traditional  
9 district schools. Indeed, with strong API scores, charter schools generally outperform LAUSD  
10 traditional district schools, and they do so while serving a diverse population.

11 8. Charter school success in LAUSD is vitally important to CCSA, its membership,  
12 and to Los Angeles students and their families seeking educational choice and opportunity.  
13 Indeed, the success of these charter schools is important to the entire state of California because  
14 of the sheer number of students involved. Significantly, the total enrollment of charter school  
15 students in the LAUSD area is larger than the total enrollment of all but four (4) of over 950  
16 California school districts.

17 9. Despite the strong performance of charter schools within LAUSD, many of  
18 CCSA's member schools in LAUSD are suffering because they lack even the most minimal  
19 facilities in which to operate. While some charter schools are fortunate to find space at current  
20 or former parochial schools or private schools, many are forced to rent commercial locales at  
21 high prices that were not built as schools and that lack basic school facilities – like libraries, play  
22 yards, cafeterias, and similar facilities that are common at LAUSD traditional district schools.

23 10. Despite the facilities challenges faced by many public charter schools, there  
24 remains tremendous unmet demand for them. At a time when LAUSD traditional district  
25 schools face continuously declining enrollment that prompts LAUSD to engage in various tactics  
26 to try to fill its classrooms, some charter schools are unable to open, grow, or remain operating  
27 because they cannot find affordable space, and many others cannot meet the huge demand that  
28

1 exists as parents seek better educational options for their children than LAUSD traditional  
2 district schools.

3 ***Proposition 39***

4 11. To address this gross disparity in the physical facilities that many district-run  
5 schools have compared to what many charter-run public schools have, California's voters  
6 enacted Proposition 39 ("Prop. 39") in November 2000. With Prop. 39's passage, California's  
7 voters declared that "public school facilities should be shared fairly among all public school  
8 pupils, including those in charter schools." (Ed. Code, § 47614, subd. (a).)

9 12. Prop. 39 imposes a mandatory duty on each school district to "make available, to  
10 each charter school operating in the school district, facilities sufficient for the charter school to  
11 accommodate all of the charter school's in-district students in conditions reasonably equivalent  
12 to those in which the students would be accommodated if they were attending other public  
13 schools of the district." (Ed. Code, § 47614, subd. (b) [emphasis added].)

14 13. In addition, Prop. 39 requires that the facilities provided to a charter school must  
15 be contiguous (located together, not spread across campus or multiple sites) and must be  
16 furnished and equipped similarly to district-run schools. (Ed. Code, § 47614, subd. (b); Cal.  
17 Code Regs., tit. 5, § 11969.2, subd. (d).) School districts also must make a reasonable effort to  
18 locate charter schools near the area where they wish to locate. (Ed. Code, § 47614, subd. (b).)

19 14. Prop. 39's mandates require that "to the maximum extent practicable, the needs of  
20 the charter school must be given the same consideration as those of the district-run schools."  
21 (*Ridgecrest Charter School v. Sierra Sands Unified School District* (2005) 130 Cal. App. 4th  
22 986, 1001.) **The purpose of Prop. 39 is "to equalize the treatment of charter and district-**  
23 **run schools with respect to the allocation of [public school campus] space between them."**  
24 (*Id.* [emphasis added].)

25 ***LAUSD's Prop. 39 Violations and CCSA's Previous Prop. 39 Lawsuit Against LAUSD***

26 15. Despite the clear mandates of Prop. 39, LAUSD refuses to follow the law. To  
27 highlight just a small handful of the facilities challenges faced by public school students  
28 attending public charter schools in LAUSD's boundaries, CCSA has attached the following

1 exhibits: **Exhibit A**, which has true and correct copies of recent photographs taken at Frederick  
2 Douglass Academy Elementary School, a charter school forced to remain in a challenging  
3 private facility because of LAUSD's failure to comply with Prop. 39; **Exhibit B**, which has true  
4 and correct copies of photographs taken of the grossly inadequate space that LAUSD offered  
5 New West Charter Middle School, pursuant to Prop. 39, at Marina del Rey Middle School; and  
6 **Exhibit C**, which has a true and correct copy of the only lunch space that LAUSD provided to  
7 Ivy Academia, a charter school which is co-locating, pursuant to Prop. 39, on the campus of  
8 LAUSD's Sunny Brae Elementary School.

9       16. Even though LAUSD's conduct is unlawful, few charter schools have any chance  
10 to seek judicial review of LAUSD's routine violations of Prop. 39. In addition to the cost and  
11 time burdens of litigation, LAUSD prevents courts from reviewing its violations of Prop. 39 by  
12 forcing charter schools through a long and arduous alternative dispute resolution ("ADR")  
13 process. In short, as a condition of obtaining charter approval, LAUSD forces charter applicants  
14 to acquiesce to a broadly-interpreted, LAUSD-written and unilaterally imposed ADR clause and  
15 process that is so slow and costly that it has proven impossible to get to court until the school  
16 year in question has long passed. During these purposefully drawn-out ADR processes, LAUSD  
17 has used the passage of time it has caused to its strategic advantage asserting that any action for a  
18 violation of Prop. 39 that does not get adjudicated promptly has become moot. This is an  
19 LAUSD-created "Catch 22" – the ADR process it set up cannot move fast enough to obtain a  
20 speedy resolution, and when the process moves slowly, LAUSD claims that the dispute is moot  
21 so no court can judge it. CCSA is informed and believes and thereon alleges that LAUSD uses  
22 this two-step technique – forcing an inequitable ADR clause and process then claiming disputes  
23 are mooted – as a shield to avoid letting any court judge its illegal Prop. 39 practices.

24       17. Faced with LAUSD's continuous and on-going violations of Prop. 39, on May 17,  
25 2007, CCSA was forced to sue LAUSD. CCSA joined in that case with two non-profit charter  
26 school operators and with the parents of children attending eight separate charter schools to  
27 which LAUSD illegally denied facilities. While CCSA sought immediate judicial relief arguing  
28 that the LAUSD-imposed ADR provisions should not apply to those time-urgent Prop. 39 claims

1 seeking school space for a school year that was to start in just months, the trial court in those  
2 cases granted LAUSD's motion to compel ADR, which prevented any chance of prompt judicial  
3 review. Still, the plaintiffs did as ordered and pursued the ADR process, pushing for a speedy  
4 resolution while LAUSD did all it could to delay adjudication.

5 18. LAUSD insisted that every step of its ADR provision be followed to delay letting  
6 a mediator even be appointed. Finally, after Hon. Eli Chernow, retired judge of the Los Angeles  
7 County Superior Court, was appointed as arbitrator, LAUSD still delayed by resisting the  
8 plaintiffs' efforts to proceed with briefing the merits of the dispute.

9 19. Eventually, over LAUSD's objections, Judge Chernow set a schedule for the  
10 arbitration. The briefing was to be completed by February 8, 2008, with a hearing on the merits  
11 on April 7, 2008 – nearly at the end of the school year for which LAUSD was supposed to have  
12 provided facilities and nearly a year after the litigation had commenced. Nevertheless, plaintiffs  
13 finally had a date when the retired judge would hear the dispute.

14 20. With a briefing and hearing schedule finally set, LAUSD at last took action. Just  
15 two business days after Judge Chernow set the briefing and arbitration hearing schedule,  
16 LAUSD's Board voted to approve a settlement with CCSA. LAUSD's Board finally agreed that  
17 it would comply with Prop. 39, rescind its previous charter school facilities policy, adopt new  
18 legal policies, work to create a publicly available facilities inventory, and negotiate a facilities  
19 form use agreement that complies with the law.

20 21. On April 22, 2008, after two months of further negotiation, LAUSD formally  
21 entered into a settlement agreement with CCSA, a true and correct copy of which is attached  
22 here as **Exhibit D** ("Settlement Agreement").

23 22. The Settlement Agreement was a major break-through in that it created a right for  
24 CCSA to compel LAUSD to start complying with Prop. 39, and it specified that no ADR process  
25 would be required for CCSA to enforce the Settlement Agreement.

***LAUSD's Continued Violations Since the Settlement Agreement and  
CCSA's Efforts to Exact Compliance***

23. Despite LAUSD's promise that it would abide by Prop. 39 and make legally compliant facilities offers to charter schools, LAUSD has utterly failed to do so in the two years following the Settlement Agreement's execution. To the contrary, LAUSD has violated nearly every obligation to which it agreed in the Settlement Agreement, with its violations starting literally within days of the execution of that agreement.

24. Since the execution of the Settlement Agreement, CCSA and its Los Angeles members have invested nearly two years of time, resources and energy in their repeated attempts to press LAUSD to live up to the law and its promises in the Settlement Agreement.

25. On March 19, 2010, CCSA sent LAUSD its most detailed letter yet spelling out how LAUSD has violated nearly every element of the Settlement Agreement, attaching documents evidencing all of those violations, and demanding immediate compliance with the Settlement Agreement – and Prop. 39. A true and correct copy of that March 19, 2010, letter and the exhibits thereto are collectively attached hereto as **Exhibit E** ("Demand Letter").

26. The Demand Letter, the Settlement Agreement, and CCSA's previous Prop. 39 litigation against LAUSD, all make clear that CCSA and its members seek no favors. They simply demand that LAUSD start complying with Prop. 39 as the voters intended.

27. CCSA and its LAUSD members have made demonstrable efforts to get LAUSD to follow Prop. 39's clear and unequivocal mandate that "[e]ach school district shall make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district." (Ed. Code, § 47614, subd. (b) [emphasis added].)

28. LAUSD's conduct over the past two years unequivocally illustrates a different picture. LAUSD's letters, memos and actions over the last two years demonstrate bad faith, illegal conduct, and gamesmanship to avoid its legal duties under Prop. 39.

29. CCSA is informed and believes and thereon alleges that LAUSD has continued to use its now-familiar tactic of forcing any LAUSD-chartered school alleging Prop. 39 violations into the slow mediation and arbitration process that LAUSD forces on charter schools in its boilerplate, non-negotiable charter language. LAUSD's efforts are tailored to delay all such disputes to the point where LAUSD may argue that the school year in question has begun and, consequently, the dispute is moot. CCSA is informed and believes and thereon alleges that LAUSD forces those one-sided, take-it-or-leave-it ADR provisions on charter schools, and then uses them as a shield to let LAUSD violate Prop. 39 with impunity, thereby preventing families and students from having alternatives to LAUSD traditional district schools.

***The New West Charter Middle School Prop. 39 Litigation Win***

30. In an extremely important litigation involving the special situation of New West Charter Middle School ("New West"), LAUSD's pattern of violating Prop. 39 and hiding behind its ADR provision is highlighted. There, following LAUSD's refusal even to grant New West a charter, New West was granted its charter directly from the State Board of Education. Accordingly, New West's charter does not contain the onerous ADR provisions that LAUSD forces on its authorized charter schools as a condition of getting a charter, so New West was able to seek swift judicial recourse for LAUSD's violations of Prop. 39. That case – *New West Charter Middle School v. Los Angeles Unified School District, et al.*, L.A.S.C. Case No. BS115979 – afforded what CCSA believes is the first chance ever for a public charter school within LAUSD's boundaries to get a court to review LAUSD's illegal conduct under Prop. 39.

31. The Hon. James C. Chalfant of the Los Angeles County Superior Court readily confirmed that LAUSD's Prop. 39 practices violate the law. In issuing a writ of mandate against LAUSD for violating Prop. 39 by refusing to provide school facilities to New West, Judge Chalfant chided LAUSD for using a "parade of unproven horrors" to make up excuses for ignoring the law, and Judge Chalfant found that "LAUSD does not offer any legal authority" for its refusal to provide school facilities. Judge Chalfant held that "LAUSD has violated its statutory obligation to accommodate New West students," noting that "charter students are LAUSD students too" and are entitled to occupy an LAUSD-owned campus even if it might

1 cause some “disruption and dislocation” for LAUSD. Accordingly, in a huge victory for New  
2 West, Judge Chalfant ordered LAUSD to provide facilities at Fairfax High School or an  
3 equivalent campus at an acceptable location. True and correct copies of the September 5, 2008,  
4 Tentative Decision on Petition for Writ of Mandate, the October 3, 2008, Judgment Granting  
5 Peremptory Writ of Mandate and Order, and the November 21, 2008, Tentative Decision on  
6 Motion to Enforce Writ, are attached hereto as **Exhibit F**.

7 32. Unfortunately, despite the Court’s decision and judgment, LAUSD flatly refused  
8 to comply with the court’s writ of mandate.

9 33. When New West was forced to move to enforce the writ, Judge Chalfant found  
10 that LAUSD “deliberate[ly] refus[ed] to comply with the writ,” fined LAUSD, and ordered  
11 damages to be paid. Those are condemning findings against LAUSD, a public body that should  
12 scrupulously follow the law.

13 34. Although LAUSD at first appealed from Judge Chalfant’s writ and judgment,  
14 LAUSD later dismissed its appeal. CCSA is informed and believes and thereon alleges that  
15 LAUSD dismissed its appeal to avoid letting an appellate court confirm that it regularly violates  
16 Prop. 39, mindful that it was also violating the Settlement Agreement with CCSA and hoping to  
17 contain New West’s victory so that LAUSD could continue to violate the law with impunity.  
18 Since only a low monetary damages award to New West was made, which sum is currently on  
19 appeal, CCSA is informed and believes and thereon alleges that LAUSD made the decision that  
20 paying a small monetary damages award to one of a handful of charter schools that are able to  
21 avoid its ADR hoops, was better for LAUSD’s political interests than to risk appellate court  
22 authority that might force LAUSD to start following Prop. 39.

23 ***LAUSD’s Failures to Comply With Prop. 39 Require the Court’s Intervention***

24 35. It has now been two years since execution of the Settlement Agreement. LAUSD  
25 has failed to live up to virtually every promise that it made in the Settlement Agreement,  
26 including most importantly its commitment to start following Prop. 39. Despite its legal  
27 obligation to follow Prop. 39 and its separate contractual promise in the Settlement Agreement to  
28

1 comply with Prop. 39, LAUSD continues to breach its obligation to share its facilities with its  
2 public school students attending charter schools.

3 36. There should be no mistake – LAUSD’s misconduct has been intentional, and  
4 intentionally deceptive. CCSA is informed and thereon alleges that LAUSD implemented a  
5 secretive program dubbed “Bucks for Bungalows” under which it ordered schools with excess  
6 classroom space to remove their portable classrooms from service so that LAUSD could  
7 misrepresent those campuses as too full to accommodate charter school students, even going so  
8 far as offering a \$25,000 reward for each portable classroom removed fast enough. It is shocking  
9 bad faith for LAUSD to waste public money and get rid of public assets with the explicit intent  
10 of then misrepresenting itself as having no room for public school students in charter schools.

11 37. CCSA is informed and believes and thereon alleges that LAUSD intentionally  
12 undermines its own charter school office and precludes its charter school office from having any  
13 chance at ever complying with Prop. 39. CCSA is informed and believes and thereon alleges  
14 that such undermining conduct includes actions by local districts, principals, teachers and other  
15 LAUSD representatives aimed at deterring LAUSD’s charter school office from assigning space  
16 to charter schools under Prop. 39. Such conduct reaches into even the highest levels at LAUSD,  
17 where, for example, one LAUSD Board member has publicly asserted that “we don’t have the  
18 money or the space to offer classrooms to 81 charters,” then, in that same comment going so far  
19 as to wonder whether LAUSD should illegally stop approving charter petitions entirely (“Should  
20 the board only approve the charter schools that we have space to house?”). (See Connie Llanos,  
21 *Schools say LAUSD not abiding by legal settlement*, L.A. Daily News (March 30, 2010), a true  
22 and correct copy of which is attached as Exhibit G.)

23 38. Moreover, CCSA is informed and believes and thereon alleges that such  
24 obstructive conduct also includes LAUSD school principals actively undermining LAUSD’s  
25 charter school office by seeking to intimidate that office so it does not allow charter schools to be  
26 co-located on “their” campuses, regardless of the law.

27 39. In fact, CCSA is informed and believes and thereon alleges that there was one  
28 especially egregious incident in early May, 2010, in which LAUSD officials organized an

1 ambush of LAUSD's own charter school office that is tasked with complying with Prop. 39. In  
2 that incident, CCSA is informed and believes and thereon alleges that LAUSD's charter school  
3 office representative visited a campus that had the capacity to provide space to a charter school  
4 under Prop. 39, but upon his arrival on campus he was ushered into a gathering of angry parents  
5 and ambushed with tremendous pressure not to allow any charter school to be located on that  
6 campus, despite the fact that space was available and that Prop. 39 requires space to be shared  
7 equitably with charter schools. CCSA is informed and believes and thereon alleges that this  
8 ambush was organized by the LAUSD school principal.

9 40. This incident is further proof that LAUSD's misconduct toward charter schools  
10 and Prop. 39 compliance is outrageous and has gone past the crisis point.

11 41. This complaint seeks specific performance, declaratory relief and injunctive relief  
12 to compel LAUSD to follow the law and comply with the promises it made under the Settlement  
13 Agreement. This Court needs to step in to ensure that public school students attending charter  
14 schools will no longer be treated like second-class citizens. To ensure that such an injunction is  
15 not an empty promise, recognizing LAUSD's years of bad faith conduct, this Court also needs to  
16 appoint a special master to aid it to monitor and compel LAUSD, finally, to follow the law.

## 17 II.

### 18 THE PARTIES

19 42. Plaintiff CCSA is a nonprofit membership and professional organization duly  
20 organized and existing under the laws of the State of California. CCSA advances the charter  
21 school movement by providing state and local advocacy, leadership on accountability,  
22 operational and support resources for member schools, and by protecting the legal rights of  
23 charter public schools and the students that attend charter public schools, including facilities  
24 equity. About 65% of California's charter schools are CCSA members, including 227 within  
25 LAUSD's jurisdiction. To protect its members' legal rights and needs, CCSA monitors and  
26 seeks to enforce school district compliance with Prop. 39 statewide throughout California.  
27 CCSA's mission is to increase student achievement by strengthening and expanding quality  
28 charter public schools throughout California, and securing legally compliant Prop. 39 facilities

1 offers for public charter schools is critical to this goal. CCSA and its membership across  
2 California, and especially those within the boundaries of LAUSD, are deeply concerned by  
3 LAUSD's long-standing hostility to charter schools and its policies and practices of flouting the  
4 directives of Prop. 39 and its failure to perform under the Settlement Agreement. CCSA, on  
5 behalf of its member schools in LAUSD, challenges LAUSD's unlawful and discriminatory  
6 failure to allocate public facilities to public charter schools in compliance with Prop. 39 and the  
7 regulations enacted to implement Prop. 39 (the "Implementing Regulations"). CCSA's members  
8 are legally entitled to transparent and legally compliant Prop. 39 facilities offers, and ensuring  
9 that public charter schools obtain such facilities offers from LAUSD is germane to CCSA's  
10 purpose and mission.

11 43. Defendant LAUSD is a public school district organized and existing under the  
12 laws of the State of California.

13 44. Defendant the Board of Education of the Los Angeles Unified School District (the  
14 "Board") is LAUSD's political body with authority to govern the district and to ensure that  
15 LAUSD complies with the Settlement Agreement, to which the Board is a party.

16 45. Defendant Ramon C. Cortines is LAUSD's Superintendent of Schools  
17 ("Superintendent Cortines"), and as such is its highest administrative officer and shares  
18 responsibility with the Board to ensure that LAUSD complies with the Settlement Agreement.  
19 Superintendent Cortines is sued here solely in his official capacity.

### 20 III.

#### 21 JURISDICTION AND VENUE

22 46. This action is properly filed in the Superior Court of California, County of Los  
23 Angeles, Central Judicial District, because the principal place of business for all Defendants and  
24 the principal location of the events at issue here are in the City of Los Angeles and, more  
25 specifically, in the Central Judicial District. Further, the Settlement Agreement provides in  
26 Section 14 that "[t]he venue for any disputes concerning this Agreement shall be in Los Angeles  
27 County."  
28

IV.

**ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

**A. Charter Schools Play An Important Role In Educating California's Children**

47. Public charter schools are an increasingly popular and successful option for parents of public school students. Charter schools are public schools, and they are given the autonomy to tailor their educational and operational approaches to meet the needs of their students and community. In exchange for this flexibility, charter schools are held accountable for producing results. This model – that fosters creativity and educational innovation – has been extremely successful for the majority of Los Angeles charter school students who mostly come from economically disadvantaged and underserved communities.

48. The diverse pedagogies and educational services offered by charter schools have proven to be very successful when compared to traditional district schools operating in the LAUSD area. The API, which is used by the State of California to evaluate a school's overall academic performance, demonstrates that charter schools in LAUSD are outperforming LAUSD traditional district schools at every level – elementary school, middle school, and high school. For the 2008-09 school year, CDE's API Growth File indicates that LAUSD traditional district elementary schools had a median API score of 757, far below the charter schools' median API of 804. At the middle school level, LAUSD traditional district schools had an API of 657, far below the charter schools' median API of 742. Finally, at the high school level, LAUSD traditional district schools had a median API score of 639, again far below the charter schools' median API of 694.

49. Given this success and the promise of opportunity for an upward trajectory, many parents have endeavored to place their children in the severely seat-limited charter schools. Charter schools generally have long waiting lists and must conduct public lotteries to fill their seats in an equitable manner. While LAUSD often asserts that charter schools select the best students as an excuse for the lower performance of LAUSD traditional district schools, to the contrary charter school students are not selected as the "cream of the crop," but rather are selected by a random drawing (i.e., lottery) open to all those seeking to attend. Some parents try

1 year after year to get a spot for their children, but remain on waiting lists due to a lack of  
2 facilities space. There is no selectivity in charter school admissions.

3 **B. Prop. 39 Obligates LAUSD To Share Facilities Equitably**

4 50. Recognizing the value of charter schools, Prop. 39 provides that “[s]tudents in  
5 public charter schools should be entitled to reasonable access to a safe and secure learning  
6 environment.” (Prop. 39, § 2, subd. (e).) Codified at Education Code Section 47614, Prop. 39  
7 further provides that public school facilities “should be shared fairly among all public school  
8 pupils, including those in charter schools.” (Ed. Code, § 47614, subd.(a).)

9 51. Prop. 39 mandates that “each school district shall make available . . . facilities  
10 sufficient for the charter school to accommodate all of the charter school’s in-district students in  
11 conditions reasonably equivalent to those in which the students would be accommodated if they  
12 were attending other public schools of the district.” (Ed. Code, § 47614, subd. (b).)

13 52. The Implementing Regulations provide that “[o]n or before February 1, the school  
14 district shall prepare in writing a preliminary proposal regarding the space to be allocated to the  
15 charter school and/or to which the charter school is to be provided access.” (Cal. Code Regs., tit.  
16 5, § 11969.9, subd. (f).) Moreover, “[o]n or before April 1 . . . the school district shall submit in  
17 writing a final notification of the space offered to the charter school.” (*Id.*, § 11969.9, subd. (h)  
18 [emphasis added].)

19 53. Prop. 39 also requires school districts, including LAUSD, to provide public  
20 charter schools and the students who attend them “reasonably equivalent” facilities to those they  
21 would have if they attended district-run schools. LAUSD’s failure to provide such facilities  
22 poses an immediate harm to thousands of charter school students within LAUSD.

23 **C. LAUSD’s Prop. 39 Violations Forced CCSA To File Suit In May 2007, Resulting In**  
24 **The Settlement Agreement Which LAUSD Is Breaching**

25 54. On May 17, 2007, CCSA, two non-profit charter school management  
26 organizations, and parents of charter school students attending eight charter schools filed two  
27 related lawsuits against LAUSD alleging, *inter alia*, that LAUSD unlawfully denied charter  
28 schools’ facilities requests and failed to comply with Prop. 39 and the Implementing

1 Regulations. Those lawsuits were titled *California Charter Schools Association, et. al. v. Los*  
2 *Angeles Unified School District, et. al.*, Los Angeles County Superior Court Case No.  
3 BS108934, and *California Charter Schools Association, et. al. v. Los Angeles Unified School*  
4 *District, et. al.*, Los Angeles County Superior Court Case No. BS108936.

5 55. As discussed above, while CCSA sought immediate judicial relief the trial court  
6 granted LAUSD's motion to compel ADR, after which LAUSD did all it could to slow the ADR  
7 process. Only with CCSA's continuous pushing was an arbitrator eventually appointed. Even  
8 then, LAUSD attempted to slow the arbitration process, with CCSA pushing over LAUSD's  
9 objections for the arbitrator to set a briefing schedule for the cases' prompt adjudication.

10 56. Two business days after the arbitrator set a schedule for the merits to be briefed  
11 (over LAUSD's objections and efforts to delay the matter), on February 12, 2008, LAUSD's  
12 Board approved a settlement of those two lawsuits, which was committed to writing in the  
13 Settlement Agreement entered into on or about April 22, 2008.

14 57. The Settlement Agreement verifies that LAUSD must share facilities equitably  
15 under the rubric of Prop. 39. Specifically, should a CCSA member school make a facilities  
16 request that complies with Prop. 39 and the Implementing Regulations, "LAUSD shall make a  
17 facilities offer to that charter school that complies with Prop. 39 and any Prop. 39 implementing  
18 regulations in effect at that time." (Exh. D, § 3.)

19 58. The Settlement Agreement also imposes affirmative obligations with clear  
20 deadlines on LAUSD to ensure its compliance with the spirit and intent of Prop. 39 and the  
21 Implementing Regulations. As described in detail below, those obligations include mandates  
22 that LAUSD: (1) negotiate in good faith and use its best efforts to agree to a form use agreement  
23 ("Form Use Agreement") that complies with Prop. 39 and the Implementing Regulations, to be  
24 offered for use by CCSA member charter schools; (2) rescind its then-existing Prop. 39 policies  
25 and replace them with policies that comply with Prop. 39 and the Implementing Regulations; (3)  
26 use its best efforts to secure funding for a comprehensive inventory of LAUSD facilities; and (4)  
27 immediately begin a planning process to produce a five-year facilities plan that meets the  
28 projected needs of charter schools. (See Exh. D, §§ 4-7.)

1           59. Despite the Settlement Agreement's mandate that LAUSD fulfill all of those  
2 obligations, LAUSD unabashedly breached the Settlement Agreement and continues to violate  
3 the law. LAUSD failed to meet any of the deadlines imposed by the Settlement Agreement, and  
4 also failed to comply with any of its ongoing substantive duties thereunder – duties to which it  
5 agreed to ensure its proper conformance with Prop. 39 and the Implementing Regulations.

6           60. On March 19, 2010, CCSA sent the Demand Letter to LAUSD outlining  
7 LAUSD's many breaches of the Settlement Agreement and demanding that LAUSD comply  
8 with the agreement without delay. (Exh. E.)

9           61. LAUSD's response was dated April 9, 2010, and postmarked April 14, 2010. It  
10 contained nothing more than a summary denial of CCSA's allegations and a suggestion that the  
11 parties meet in order to allow LAUSD to demonstrate all of its efforts under Prop. 39. A true  
12 and correct copy of that April 9, 2010, letter is attached hereto as **Exhibit H**.

13           62. On April 30, 2010, CCSA responded to LAUSD indicating its disappointment at  
14 LAUSD's shallow response. In addition, CCSA indicated that it would meet with LAUSD to  
15 discuss CCSA's allegations provided certain assurances were met by the District that would  
16 make the exercise a timely and fruitful one as opposed to an unproductive and drawn-out  
17 process. A true and correct copy of that April 30, 2010, letter is attached hereto as **Exhibit I**.

18           63. LAUSD responded again to CCSA in a letter dated May 5, 2010 – seven weeks  
19 after CCSA sent its Demand Letter – and in it LAUSD claimed that it was still discussing the  
20 matter internally and determining who from LAUSD should participate in a meeting with CCSA.  
21 Yet again, LAUSD offered no dates for any meeting – just another statement that it hopes to talk  
22 someday. That dilatory conduct shows that LAUSD does not take CCSA's concerns over  
23 LAUSD's many breaches of the Settlement Agreement seriously, and has no true intention of  
24 discussing how LAUSD can comply with the Settlement Agreement and Prop. 39. A true and  
25 correct copy of that May 5, 2010, letter is attached hereto as **Exhibit J**.

1 **D. LAUSD Breached Section 3 Of The Settlement Agreement, Which Required**  
2 **LAUSD To Make Prop. 39-Compliant Facilities Offers To Charter Schools**

3 **1. LAUSD Breached the Settlement Agreement Immediately After Its**  
4 **Execution by Rescinding Offers to Charter Schools**

5 64. Section 3 of the Settlement Agreement states: “Future Facilities Offers. Provided  
6 that a CCSA member charter school submits a future facilities request that is legally sufficient  
7 under Prop. 39 and any Prop. 39 implementing regulations in effect at that time, LAUSD shall  
8 make a facilities offer to that charter school that complies with Prop. 39 and any Prop. 39  
9 implementing regulations in effect at that time. This obligation shall apply to requests for  
10 facilities that are submitted for the 2008-2009 school year, shall inure to the benefit of all CCSA  
11 member charter schools, including without limitation to PUC and Green Dot, and shall continue  
12 for the term of this Agreement.”

13 65. Despite its duties under Prop. 39 and Section 3 of the Settlement Agreement,  
14 LAUSD began breaking its promises before the ink on the Settlement Agreement was even dry.

15 66. On April 22, 2008, the same day that the Settlement Agreement was executed,  
16 LAUSD sent a series of inter-office memoranda to Board members addressing charter school co-  
17 locations at schools such as Taft High School and Fairfax High School. A true and correct copy  
18 of the April 22, 2008, Inter-Office Correspondence from Ray Cortines regarding Taft High  
19 School and the April 22, 2008, Inter-Office Correspondence from Ray Cortines regarding Fairfax  
20 High School are attached hereto as **Exhibit K**. Those actions set LAUSD on a path toward an  
21 immediate breach of Section 3.

22 67. In those April 22 memoranda, LAUSD acknowledged its legal obligation to  
23 provide facilities to charter schools under Prop. 39 and the Settlement Agreement and noted an  
24 increased need for charter school seats among LAUSD public charter school students, but after  
25 recounting its obligations the memoranda undercut one of the main principles of Prop. 39 by  
26 asserting that LAUSD would not provide space to a charter school entitled to it if LAUSD, in its  
27 sole discretion, “find[s] that the co-location is clearly detrimental to the education of charter or  
28 non-charter school students.” (See, e.g., Exh. K [emphasis added].) LAUSD’s actions were

1 patently illegal. The law does not provide an option or discretionary authority for LAUSD's  
2 Superintendent, in his sole opinion, to decree that following Prop. 39 and the Settlement  
3 Agreement is "detrimental" and, thus, to refuse to follow its obligations.

4 68. Putting that unlawful and unilateral presumption into effect, on April 30, 2008, in  
5 further violation of Prop. 39 and the Settlement Agreement, LAUSD sent another memorandum  
6 to the Board, this time stating that LAUSD had "decided to withdraw . . . seven offers based  
7 upon impacts the charter co-location would impose." That same day, LAUSD sent letters to  
8 seven charter schools that had received facilities offers, including New West Charter Middle  
9 School, unilaterally withdrawing LAUSD's facilities offers. True and correct copies of the April  
10 30, 2008, Inter-Office Correspondence from Ray Cortines and the April 30, 2008, Letter from  
11 Ray Cortines to New West Charter School are collectively attached hereto as Exhibit L.

12 69. Those unlawful April 30, 2008, rescissions stated that LAUSD had "reassessed  
13 [the] offer and .... concluded that the campus of [the school where the co-location was to occur]  
14 cannot be shared fairly among the non-charter and charter school students *because the co-*  
15 *location may have a detrimental impact* on the education of all the students on this campus."  
16 (See, Exh. L [emphasis added].) And so, with no warning or process, LAUSD deprived  
17 classrooms to all of the public school students who would have attended those facilities.

18 70. Those actions were plainly illegal. As discussed above, Judge Chalfant in *New*  
19 *West Charter Middle School v. LAUSD*, Los Angeles Superior Court Case No. BS115979,  
20 confirmed that LAUSD's conduct was illegal and granted New West's petition for writ of  
21 mandate and entered a judgment against LAUSD. Notably, Judge Chalfant recognized that  
22 LAUSD's conduct was "*patently unreasonable and unlawful*," its justification for actions taken  
23 constituted a "Parade of Unproven Horribles," and that it had "*a duty to accommodate New West*  
24 *somewhere*." (Tentative Order, Exh. F, at pp. 4-6 [emphasis added].)

25 71. Despite the writ of mandate requiring LAUSD to "fulfill its Prop. 39 duty" and  
26 provide New West with legally sufficient facilities, LAUSD refused to comply with the writ. In  
27 granting New West's motion to enforce the writ, Judge Chalfant held that the alternative space  
28 LAUSD offered New West "could not possibly meet the requirements" of Prop. 39. (See,

1 November 21, 2008, Tentative Decision on Motion to Enforce Writ, Exh. F, p. 4.) Among other  
2 significant deficiencies in the offer, Judge Chalfant noted that “LAUSD staff explained that New  
3 West’s middle schools students would have no access to any library, computer lab, multi-  
4 purpose auditorium, or cafeteria areas. New West’s designated student ‘eating area’ was  
5 outdoors and barely separated by a wall from LAUSD’s garbage dumpsters, which have a bad  
6 odor.” (*Id.* at p. 3.)

7       **2.       LAUSD Breached the Settlement Agreement Again When It Refused to**  
8       **Make Lawful Facilities Offers for the 2009-10 School Year**

9       72.       Despite adverse rulings in the *New West* case, and in further breach of Section 3  
10 of the Settlement Agreement, LAUSD again failed to make legally compliant facilities offers to  
11 charter schools during the facilities request and offer process for the 2009-10 school year.

12       **a.       LAUSD Illegally Rejected Charter Schools’ Attendance Projections,**  
13       **Even Though the Projections Followed the Law**

14       73.       On December 1, 2008, LAUSD sent letters to several charter schools telling them  
15 that LAUSD would not accept the schools’ average daily attendance (“ADA”) projections,  
16 asserting that LAUSD believed that they would have fewer than the required 80 in-district ADA  
17 for the 2009-10 school year.

18       74.       In objecting to those charter schools’ ADA projections, LAUSD violated the  
19 Implementing Regulations. LAUSD inappropriately ignored the schools’ documentation of  
20 historical enrollment, student retention, and student growth trends, prior ADA figures, and/or  
21 historical and current wait list information. In many cases, LAUSD only acknowledged one-to-  
22 one verification of specific student names despite the fact that LAUSD’s conduct violated the  
23 Implementing Regulations’ express provision that the ADA projections “need not be verifiable  
24 for precise arithmetical accuracy.” (See Cal. Code Regs., tit. 5, § 11969.9, subd. (c)(1)(C).)  
25 LAUSD’s conduct in misapplying those schools’ attendance projections did not comply with  
26 Prop. 39’s Implementing Regulations and so deprived those schools of facilities, violating  
27 Section 3 of the Settlement Agreement requiring LAUSD to make facilities offers that “compl[y]  
28 with Prop. 39 and any Prop. 39 implementing regulations in effect at that time” (Exh. D, § 3.)

1           75. In addition, LAUSD rejected outright many charter schools' ADA projections  
2 without informing the schools of their right to respond to LAUSD's determination by January 2.  
3 In doing so, LAUSD cut off the iterative process for those schools, completely ignoring the  
4 Implementing Regulations. CCSA notified LAUSD of these violations in a letter dated January  
5 29, 2009, from Gary Borden of CCSA to Jose Cole-Gutierrez of the LAUSD, a true and correct  
6 copy of which is attached hereto as Exhibit M, but LAUSD did not remedy its breach.

7                   **b. LAUSD Failed to Make Legally-Compliant Preliminary and Final**  
8                   **Offers for the 2009-2010 School Year, in Breach of Prop. 39 and**  
9                   **Section 3 of the Settlement Agreement**

10           76. On January 30, 2009, LAUSD sent letters to various CCSA member schools  
11 refusing to provide preliminary facilities offers and claiming that those schools were ineligible to  
12 receive facilities offers based on their ADA projections.

13           77. Each of those schools, however, provided timely responses documenting specific  
14 objections to LAUSD's December 1, 2008, letters claiming reductions in the schools' ADA  
15 projections. Despite this, LAUSD arbitrarily denied those schools facilities in violation of Prop.  
16 39 and in further breach of Section 3 of the Settlement Agreement.

17           78. In addition, on January 30, 2009, LAUSD sent letters to over a dozen other CCSA  
18 member schools refusing to provide preliminary offers based on a claim that it "has not yet been  
19 able to identify space." Those letters continued in the vein of LAUSD's inappropriate Inter-  
20 Office Correspondence of April 22, 2008, (Exh. K) by continuing to assert that, unless LAUSD  
21 in its sole discretion finds it convenient to provide space to charter schools, it simply will not do  
22 so. That is a clear violation of Prop. 39 and Section 3 of the Settlement Agreement.

23           79. Of the purported offers, both preliminary and final, that LAUSD was willing to  
24 make for the 2009-2010 school year, which LAUSD made in or about February 1 and April 1,  
25 2009, respectively, they universally violated Prop. 39 in various respects, further breaching  
26 Section 3 of the Settlement Agreement.

27           80. For example, among other things, those preliminary offers failed to identify  
28 comparison schools properly; used incorrect ADA projections for the charter schools; failed to

1 allocate sufficient teaching stations, specialized classroom space, and non-teaching space to the  
2 charter schools; offered facilities not reasonably equivalent to the condition of comparison  
3 schools; and contained illegal contingencies, including the contingency that the charter schools  
4 waive their rights to challenge LAUSD's compliance with Prop. 39 as a condition to accepting  
5 the facilities offer. In some instances, those preliminary offers even admitted that LAUSD did  
6 not accommodate the charter schools' projected in-district ADA.

7 81. LAUSD was notified of these deficiencies in a February 27, 2009, letter from  
8 Middleton, Young & Minney, LLP to LAUSD responding to LAUSD's preliminary offer to New  
9 West Charter School, but LAUSD refused to remedy its violations.

10 82. LAUSD's final facilities offers had similar deficiencies, including the failure to  
11 respond to concerns addressed by charter schools, the failure to allocate reasonably equivalent  
12 facilities to charter schools, the failure to make a reasonable effort to locate the charter schools  
13 near their requested locations, and the imposition of a facilities Form Use Agreement containing  
14 impermissible provisions on the charter schools as a condition of acceptance, all in breach of  
15 Prop. 39, its Implementing Regulations, and Section 3 of the Settlement Agreement.

16 83. In a letter sent on or about March 9, 2009, CCSA notified LAUSD of its breaches  
17 of the Settlement Agreement and its failure to comply with Prop. 39.

18 84. LAUSD was also notified of these issues in an April 30, 2009, letter from  
19 Middleton, Young & Minney, LLP to LAUSD responding to LAUSD's final offer to CHAMPS  
20 Charter High School, but LAUSD refused to remedy its violations.

21 85. Such deficiencies forced New West Charter Middle School, one of the few charter  
22 schools located in LAUSD's jurisdiction that is not subject to LAUSD's onerous ADR provision,  
23 to file another lawsuit against LAUSD alleging violations of Prop. 39. That action, which was  
24 filed in the Los Angeles County Superior Court on August 11, 2009, is titled *New West Charter*  
25 *Middle School v. LAUSD*, Case No. BS122116, and is currently pending.

26 c. **LAUSD Continued to Violate Prop. 39 and Breach Section 3 of the**  
27 **Settlement Agreement by Making Rolling Offers for the 2009-2010**  
28

**School Year and Imposing Illegal Restrictions and Burdens From  
April 2009 Through August 2009**

86. After the April 1, 2009, deadline for final offers had come and gone and LAUSD failed, yet again, to comply with Prop. 39, LAUSD continued to engage with certain Prop. 39 applicants. In the course of those actions, LAUSD took advantage of schools needing sites by exacting unlawful concessions from charter schools, including making some accept changes to their schedules to conform to LAUSD's schedule, making charter schools to use LAUSD's meal services, changing space allocations, and many other forced concessions that violate Prop. 39, its Implementing Regulations, Section 3 of the Settlement Agreement, and the covenant of good faith and fair dealing implied in the Settlement Agreement.

87. CCSA is informed and believes and thereon alleges that although 60 charter schools requested facilities from LAUSD for the 2009-10 school year, LAUSD provided final offers to only 36 of them and none of those offers complied with Prop. 39. Even though some of the charter schools had no alternative but to accept LAUSD's unlawful offers, the fact that a charter school with no viable options might accept an illegal offer rather than turn students away does not mean the offer complied with Prop. 39. LAUSD sometimes asserts that the fact that some charter schools accept their offers means that LAUSD complies with the law, but all that shows is that LAUSD takes advantage of charter schools' desperation for educational space.

**3. LAUSD Continued to Violate Prop. 39 During the Facilities Request and  
Offer Process for the 2010-2011 School Year**

88. In responding to facilities requests for the 2009-2010 school year, CCSA and many of its member schools provided LAUSD with ample notice concerning LAUSD's previous failures to comply with Prop. 39 and the Settlement Agreement. Despite repeated requests for compliance with the law and the Settlement Agreement, LAUSD's actions grew even more egregious during the application process for 2010-2011 school year facilities.

1                   a.     **LAUSD's Rolling and Deficient Preliminary Offers for the 2010-2011**  
2                             **School Year Violated Prop. 39 and Breached Section 3 of the**  
3                             **Settlement Agreement**

4           89.     As CCSA explained in a February 8, 2010, letter to LAUSD, 81 charter schools in  
5 LAUSD anxiously awaited preliminary offers from LAUSD by February 1, 2010. Most were  
6 sorely disappointed. Despite the strict time deadlines set forth in the Implementing Regulations,  
7 LAUSD, in violation of Prop. 39 and in breach of Section 3 of the Settlement Agreement, failed  
8 to make at a minimum 65 preliminary offers to charter schools in LAUSD that had submitted  
9 complete facilities requests. Instead of offers, those 65 charter schools received short letters  
10 stating that LAUSD had not yet identified space for them. Those letters failed to demonstrate  
11 any meaningful effort toward finding space for those charter schools. No concrete action plan  
12 was identified indicating that LAUSD would make any effort to accommodate those charter  
13 schools and their students. Instead, LAUSD simply gave itself a unilateral extension of time  
14 within which to respond under Prop. 39 by indicating that the "District will continue to evaluate  
15 potentially available space and will make final offers on April 1, 2010."

16           90.     In violation of Prop. 39 and in breach of Section 3 of the Settlement Agreement,  
17 only ten charter schools received timely preliminary offer letters. In a number of those cases, the  
18 preliminary offers were legally inadequate on their face. For example, LAUSD offered a school  
19 with a projected ADA of 1,100 students the use of only eight classrooms and one office, which  
20 would result in over 137 students per classroom. In another case, LAUSD offered a school with  
21 a projected ADA of 564 students the use of seven classrooms and one office, resulting in 80+  
22 students per classroom. These purported offers do not qualify as valid Prop. 39 offers.

23           91.     After the deadline, LAUSD continued to make equally non-compliant rolling  
24 preliminary offers in breach of Section 3 of the Settlement Agreement.

25                   b.     **LAUSD's Final Offers for the 2010-2011 School Year Violated Prop.**  
26                             **39 and Further Breached the Settlement Agreement**

27           92.     Despite the April 1, 2010, deadline to make final space offers for the 2010 – 2011  
28 school year (see Cal. Code Regs., tit. 5, § 11969.9, subd. (h)), out of 81 applications, LAUSD

1 issued timely final offers to only 42 schools – even though the law requires offers to be made to  
2 all qualified applicants.

3 93. CCSA is informed and believes and thereon alleges that none of those 42 “offers”  
4 comply with Prop. 39.

5 94. As for the rest of the charter school applicants, LAUSD refused to offer them any  
6 space or unilaterally decreed that they were ineligible for space, in violation of Prop. 39.

7 **4. Since 2002, LAUSD Issued Over \$6 Billion in Bonds to Build 180,000 New**  
8 **Classroom Seats but Its Student Population Declined 16% Leaving LAUSD**  
9 **With Excess Space and Reduced Class Sizes, but LAUSD Still Refuses Space**  
10 **to Students in Charter Schools**

11 95. Since 2002, LAUSD asked voters to approve three bond measures primarily for  
12 new facility construction, allegedly to relieve “overcrowding” at LAUSD traditional district  
13 schools. Based largely on LAUSD’s dire warnings about a student population that LAUSD said  
14 would greatly increase through the decade of the 2000s, voters approved over \$10 billion in  
15 bonds: \$3.3 billion 2002 for Measure K, \$3.87 billion in 2004 for Measure R, and \$3.985 billion  
16 in 2005 for Measure Y. Most of that bond money – over \$6 billion – was earmarked for new  
17 construction: \$2.6 billion from Measure K, \$1.857 billion from Measure R and \$1.6 billion from  
18 Measure Y. Those bond measures stated that they would allow LAUSD to create approximately  
19 179,000 new classroom seats: 110,000 for Measure K, 49,000 for Measure R, and 20,000 for  
20 Measure Y.

21 96. The ballot measure for Measure K in 2002 stated that “the District expects to be  
22 able to create *110,000 new classroom seats* for District students at neighborhood schools.”  
23 (Emphasis added.) The “Argument in favor of Measure K” section of the ballot measure stated:  
24 “Many of our schools are overcrowded. Over the next decade our district will likely grow by  
25 200,000 students. Measure K will help relieve overcrowding by permitting the construction of  
26 80 new schools and 79 additions or expansions.”  
27  
28

1           97.     The findings section of the ballot measure for Measure R in 2004 stated:

2                     “The Los Angeles Unified School District (“the District”) is  
3                     supported by a community that is committed to creating and  
4                     maintaining a high-quality learning environment for all of its  
5                     *approximately 750,000 students*. The District has experienced  
6                     enormous growth within the past 20 years, adding approximately  
7                     190,000 students — a number that is itself larger than any other  
8                     school district in California. Consequently, over 100,000 more  
9                     students are enrolled in the District than it has two-semester seats  
                      for them to occupy. More than 15,000 students cannot attend their  
                      neighborhood schools due to overcrowding and must instead be  
                      bussed to other campuses, sometimes more than an hour away.  
                      *Enrollment is expected to continue to increase by thousands of*  
                      *students each year*. Furthermore, additional facilities are necessary  
                      if the District is going to be able to achieve the educational benefits  
                      of smaller learning environments.”

10       (Emphasis added.)

11           98.     The ballot measure for Measure R stated “the District expects to be able to create  
12       approximately 49,162 new classroom seats for District students at neighborhood schools.”

13           99.     Similarly the findings section of the ballot measure for Measure Y in 2005 stated:

14                     The Los Angeles Unified School District (“the District”) is  
15                     supported by a community that is committed to creating and  
16                     maintaining a high-quality learning environment *for all of its*  
                      *approximately 750,000 students*.

17                     The District has experienced enormous growth within the past 20  
18                     years, adding approximately 190,000 students — a number that is  
19                     itself larger than any other school district in California. By 2002,  
20                     over 100,000 more students were enrolled in the District than it  
21                     had two-semester seats for them to occupy, more than 15,000  
22                     students could not attend their neighborhood schools due to  
                      overcrowding and instead had to be bussed to other campuses,  
                      sometimes more than an hour away. Over 354,000 students  
                      attended schools that were operating on special calendars that  
                      could only accommodate their enrollment through the use of multi-  
                      tracking schedules that reduced the number of school-days students  
                      attended school. *This level of enrollment is expected to continue.*

23       (Emphasis added.) It also claimed: “This measure will enable the District to construct the  
24       20,000 classroom seats needed to end overcrowding and accommodate future enrollment.”

25           100.     Taken together, LAUSD told the voters that these three bond measures would  
26       create approximately 180,000 new classroom seats (110,000 for Measure K, 49,162 for  
27       Measure R, and 20,000 for Measure Y).  
28

1           101. In addition to this \$6 billion in bond money for new construction, LAUSD had  
2 substantial additional money that it used to build new schools. As Superintendent Cortines  
3 stated in a March 17, 2010, press release: “[W]e have invested \$14 billion in constructing 87  
4 brand new schools and have completed nearly 20,000 modernization projects designed to  
5 promote positive educational learning environments and excellence in academic achievement.”

6           102. In stark contrast to LAUSD’s assertions of large, imminent increases in its student  
7 population, enrollment at LAUSD traditional district schools has substantially decreased since it  
8 started its “bond and build” campaigns in 2002, and it is still declining. In 2002-2003, before its  
9 massive construction program, LAUSD’s student population was 737,739 students (excluding  
10 students in independent charter schools) but LAUSD’s estimate for its 2009-2010 enrollment is  
11 just 621,689 (excluding charters) and LAUSD’s projected enrollment for 2010-2011 and 2011-  
12 2012 is even less. That is a 16% decline in eight years. (See LAUSD’s Superintendent’s 2009-  
13 2010 Final Budget, App. I, [http://notebook.lausd.net/pls/ptl/docs/PAGE/CA\\_LAUSD/](http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/LAUSDNET/OFFICES/CFO_HOME/CFO_TREASURY/CFO_FINANCIAL_INFORMATION/09-10%20SUPERINTENDENT'S%20FB.PDF)  
14 [LAUSDNET/OFFICES/CFO\\_HOME/CFO\\_TREASURY/](http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/LAUSDNET/OFFICES/CFO_HOME/CFO_TREASURY/CFO_FINANCIAL_INFORMATION/09-10%20SUPERINTENDENT'S%20FB.PDF)  
15 [CFO\\_FINANCIAL\\_INFORMATION/09-10%20SUPERINTENDENT'S%20FB.PDF](http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/LAUSDNET/OFFICES/CFO_HOME/CFO_TREASURY/CFO_FINANCIAL_INFORMATION/09-10%20SUPERINTENDENT'S%20FB.PDF).)

16           103. The fact that LAUSD was building more classroom seats than it needed to meet  
17 all of its goals was apparent even as early as two years ago. As the Los Angeles Times noted,  
18 LAUSD’s “own projections show [new construction] would produce space for 25,000 more  
19 students than needed to take schools off year-round schedules and eliminate forced busing, the  
20 goals of the school building program.” (See Evelyn Larrubia, *L.A. Unified Schools Won’t Lack*  
21 *for Space; The District’s Building Boom is a Bust for Taxpayers, Critics Say*, L.A. Times  
22 (June 23, 2008), p.1.)

23           104. So, LAUSD planned for a huge student increase and borrowed \$6 billion to build  
24 180,000 new classroom seats to meet that “increase,” then actually had a 16% reduction in  
25 students, but still refuses to accommodate public school students attending charter schools.  
26  
27  
28

1           **5.     The “Public School Choice” Program Shows That LAUSD Has Excess Space,**  
2                           **Yet LAUSD Refuses Facilities to Students in Charter Schools**

3           105.   LAUSD recently started a program it entitled, “Public School Choice” (“PSC”)  
4 that, in its first round of operation, was supposed to have taken 24 of LAUSD’s new schools and  
5 some of its underperforming schools and open them up for innovation through a public bidding  
6 process. That PSC process was deeply flawed, however, and unlike true public bidding  
7 processes with rules and an obligation for the best bidders to win, this PSC process had results  
8 dictated largely by political interests that cut charter school operators out. That process was  
9 heavily influenced by LAUSD union interests that wanted to keep charters out of LAUSD  
10 facilities, some of whom even sued LAUSD to prevent any charter schools from getting any of  
11 the PSC campuses.

12           106.   While the PSC process has proven to be mostly an empty promise for most  
13 students attending charter schools, the very fact that LAUSD engaged in this PSC process to  
14 decide what to do with 24 new campuses shows that LAUSD has the capacity to comply with its  
15 legal duties under Prop. 39 and the Settlement Agreement. Having violated Prop. 39 and the  
16 Settlement Agreement for years, LAUSD could have chosen to use the luxury of so many new  
17 campuses at a time of declining enrollment to start following the law while meeting its other  
18 obligations to Concept 6 multi-track campuses – but LAUSD refused to do so.

19           107.   The inherently political nature of LAUSD’s animus toward highly successful  
20 charter schools is widely known. For example, in a March 2, 2010, Los Angeles Times editorial,  
21 the Times wrote: “The Los Angeles Unified school board looked transformation in the eye – and  
22 blinked. By overriding several recommendations of its top experts and cutting three of the  
23 region’s most respected charter organizations out of the picture, the board sadly demonstrated  
24 once again that it is devoted more to the politics of running schools than to the education of  
25 students.” (See *So-called school reform*, L.A. Times (March 2, 2010), a true and correct copy of  
26 which is attached hereto as **Exhibit N.**)

27           108.   That Times editorial continued: “There is no way to ignore the effect of heavy  
28 lobbying by labor-related groups against the charter applicants. One board member reportedly

1 voted against a certain charter because of personal dislike of its leader. Another said privately  
2 that the board is already liberal in its approval of new charter schools; why give them district  
3 campuses as well? If those are among the prevailing opinions, it's hard to see why the board  
4 bothered with the initiative in the first place." (*Id.* [emphasis added].)

5 109. LAUSD's PSC process highlights that LAUSD is firmly committed to violating  
6 Prop. 39 and the Settlement Agreement, and further demonstrates that LAUSD is not telling the  
7 truth – year in and year out – when it insists during the Prop. 39 process that it has no room for  
8 the public school students attending charter schools.

9 6. **"Bucks for Bungalows" – LAUSD Is Eliminating Portable Classrooms Even**  
10 **as It Claims That It Has No Room for Its Public Students Attending Charter**  
11 **Schools**

12 110. CCSA is informed and believes and on that basis alleges that LAUSD is in the  
13 process of removing large numbers of portable classrooms from its school campuses. These  
14 portable classrooms have been used at schools for decades as a viable option to add classroom  
15 space to existing campuses relatively quickly and inexpensively, and they are perfectly adequate  
16 for educating students.

17 111. CCSA is informed and believes and thereon alleges that LAUSD's goal of  
18 removing portable classrooms from LAUSD campuses is specifically intended to reduce  
19 classroom space so that LAUSD traditional district schools can pretend to be too crowded to  
20 accommodate co-location with charter schools.

21 112. CCSA is informed and believes and thereon alleges that LAUSD, knowing that  
22 this lawsuit was imminent, has given huge monetary incentives to schools to remove those  
23 portable classrooms fast, offering LAUSD traditional district schools \$25,000 for each portable  
24 removed and shamefully calling this secretive program "Bucks for Bungalows."

25 113. CCSA is informed and believes and thereon alleges that LAUSD was so  
26 desperate to eliminate these portable classrooms that could be used by students attending charter  
27 schools that it demanded that schools remove them in a matter of weeks – causing great  
28

1 disruption to the schools that had the excess space – but that the schools moved fast to comply to  
2 keep charter school students out and to collect LAUSD’s cash reward.

3 114. Based on the foregoing allegations, LAUSD’s conduct constitutes a waste of  
4 public funds and gross abuse of power. In an environment where students attending charter  
5 schools have no classrooms at all and LAUSD falsely insists that it has no space for them,  
6 LAUSD’s apparent intentional actions to reduce its own classroom space show that LAUSD has  
7 no intention of ever complying with Prop. 39 or the Settlement Agreement. LAUSD needs direct  
8 judicial oversight to stop intentional misconduct. LAUSD forfeited any claim of trust.

9 7. **LAUSD’s Closure of Several Schools and Its Continuation of Schools With**  
10 **Low Enrollments Also Shows That LAUSD Has Excess Space**

11 115. CCSA is informed and believes and thereon alleges that, prompted by declining  
12 enrollment, LAUSD recently formed a plan to close at least eleven schools. Ultimately, in April,  
13 2010, LAUSD approved the closure of just three of those schools, and chose to keep operating  
14 eight schools with low student populations. LAUSD’s decision to close some schools and  
15 maintain others with low enrollments further demonstrates that LAUSD has excess classroom  
16 space that LAUSD could use to comply with Prop. 39 and the Settlement Agreement.

17 8. **LAUSD Tried to Force Students Attending Schools in Other School Districts**  
18 **to Attend LAUSD Traditional District Schools, Further Showing That**  
19 **LAUSD Has Excess Space but Still Will Not Accommodate Charters**

20 116. CCSA is informed and believes and thereon alleges that LAUSD has long had the  
21 practice that if parents found public schools in other school districts that they would rather have  
22 their children attend, and if the other school districts would accept the student, then LAUSD  
23 would consent to that inter-district transfer. Recently, however, LAUSD suddenly rescinded that  
24 long-held policy because LAUSD has excess classroom space that it wanted to force students to  
25 fill, even when those students had been attending schools in other districts for many years.

26 117. LAUSD issued a press release on March 17, 2010, announcing a revised inter-  
27 district transfer policy that LAUSD admitted was designed to force students who are already  
28 happily attending schools in other school districts to leave the schools they have long attended

1 and to attend LAUSD traditional district schools instead. LAUSD even admitted that the point  
2 of that new policy was “to help maintain class size and save teacher jobs.” (See Exhibit O,  
3 containing a true and correct copy of LAUSD’s March 17, 2010, News Release, “LAUSD  
4 REVISES INTER-DISTRICT TRANSFER POLICY.”)

5 118. In that same press release, Superintendent Cortines touted that LAUSD had  
6 “invested \$14 billion in constructing 87 brand new schools and have completed nearly 20,000  
7 modernization projects designed to promote positive educational learning environments and  
8 excellence in academic achievement,” which he used to justify the decision to force students to  
9 leave their current schools and attend LAUSD traditional district schools. (*Id.*)

10 119. CCSA is informed and believes and thereon alleges that, due to a major outcry  
11 from parents who did not want to take their children out of their current schools and put them in  
12 LAUSD traditional district schools, LAUSD was forced to drop that new policy.

13 120. LAUSD’s conduct with its ill-fated effort to force students to attend its schools  
14 simultaneously demonstrates LAUSD’s capacity to comply with Prop. 39 and its refusal to do so.  
15 Instead of trying to fill its empty seats with students who do not want to attend LAUSD  
16 traditional district schools, LAUSD could have started complying with Prop. 39 and the  
17 Settlement Agreement. Further, LAUSD’s stated goal of wanting “to help maintain class size  
18 and save teacher jobs” shows LAUSD’s unlawful and political priorities. LAUSD’s priority is  
19 supposed to be educating students, and Prop. 39 and the Settlement Agreement requires LAUSD  
20 to accommodate charter schools as part of that goal to educate students, but when faced with  
21 empty seats LAUSD looks first to how it can protect jobs of teachers in LAUSD’s unions  
22 without regard for what is best for the educations of the students involved.

23 **E. LAUSD Is Also Breaching Section 4 Of The Settlement Agreement Because It Failed**  
24 **To Negotiate A Form Use Agreement In Good Faith; LAUSD Imposes A Form Use**  
25 **Agreement On Charters That Violates Prop. 39**

26 121. Section 4 of the Settlement Agreement required LAUSD to “negotiate in good  
27 faith” with CCSA and use its best efforts to agree to a Form Use Agreement that LAUSD would  
28 then offer for use by any CCSA member school planning to co-locate on LAUSD facilities in

1 accordance with Prop. 39. The Settlement Agreement specified that the Form Use Agreement  
2 must “comply with Prop. 39 and the implementing regulations.” While CCSA and LAUSD  
3 engaged in protracted negotiations over a template Form Use Agreement, LAUSD did not  
4 negotiate in good faith and the negotiations ultimately resulted in a Form Use Agreement that  
5 violates Prop. 39.

6 122. For example, the Implementing Regulations provide that ongoing maintenance  
7 and operations (“M&O”) of facilities are the responsibility of the charter school with the school  
8 district providing only deferred maintenance on the facilities. (Cal. Code Regs., tit. 5, § 11969.4,  
9 subd. (b).) Moreover, Section 11969.7(a) expressly states that “facilities costs do not include any  
10 costs that are paid by the charter school, including, but not limited to, costs associated with  
11 ongoing operations and maintenance . . .” (Cal. Code Regs., tit. 5, § 11969.7, subd. (a).) Thus,  
12 Prop. 39 and the Implementing Regulations expressly provide that the costs that LAUSD can  
13 charge charter schools must not include costs for routine repair and maintenance of the facility.

14 123. Despite the express language that provides charter schools with the statutory right  
15 to take care of M&O themselves, Section 11.6 of the Form Use Agreement mandates that  
16 LAUSD perform those operations and maintenance (at great expense to the charter school)  
17 stating specifically: “LAUSD shall solely be responsible for performing M&O on the Charter  
18 School Premises and the Charter School Shared Premises.”

19 124. Moreover, LAUSD’s calculation of those costs also fails to comply with Prop. 39.  
20 For the 2009-2010 school year, LAUSD charged an outrageous \$7.62 per square foot for what it  
21 labels “LAUSD Facilities Costs for Co-Locations.” The costs outlined are described in a manner  
22 designed to make it particularly difficult for charter schools to separate out what is permitted and  
23 what is not, especially given that LAUSD fails to separate out the oversight, pro rata share, and  
24 maintenance and operations charges for the 2009-2010 school year. For the 2010-2011 school  
25 year LAUSD seeks to charge an even more outrageous \$7.92 per square foot.

26 125. Despite the obtuse presentation of charges, it is evident that many are unlawful.  
27 For example, Exhibit B to the Form Use Agreement includes a line item for “Insurance.”  
28 Insurance is not contemplated under the Implementing Regulations as an acceptable “facilities

1 cost.” Moreover, the calculation of these charges, most of which depend upon the LAUSD’s  
2 total building square footage, is questionable given LAUSD’s lack of a comprehensive facilities  
3 inventory, as discussed below.

4 126. Pursuant to Section 4 of the Settlement Agreement, LAUSD was obligated to  
5 negotiate a Form Use Agreement that fully complied with Prop. 39. LAUSD’s failure to do that  
6 is a breach of Section 4 of the Settlement Agreement as well as a breach of the covenant of good  
7 faith and fair dealing implied in the Settlement Agreement.

8 127. In its March 19, 2010, Demand Letter, CCSA demanded that LAUSD perform in  
9 accordance with Section 4 of the Settlement Agreement by modifying the Form Use Agreement  
10 to comply with law in sufficient time meet the legal standards in sufficient time to place such a  
11 revised Form Use Agreement in effect during the next school year. (Exh. E, p. 11-12.) LAUSD  
12 has not corrected the Form Use Agreement.

13 **F. LAUSD Is Also Breaching Section 5 Of The Settlement Agreement Because It Failed**  
14 **To Rescind Its Unlawful Prop. 39 Policies And Replace Them With A New Prop. 39-**  
15 **Compliant Policy As Mandated By The Settlement Agreement**

16 128. In March 2004, LAUSD adopted Report No. 257-03-04, “Policies and Procedures  
17 Regarding Allocation of Facilities to Charter Schools Under Education Code Section 47614”  
18 (“Prop. 39 Policies”), a true and correct copy of which is attached hereto as **Exhibit P**. This  
19 document unlawfully included many criteria beyond Prop. 39’s scope, and mischaracterized  
20 Education Code 47614(b), with the intention of discriminating against charter school students.

21 129. Part of the reason that CCSA was forced to sue LAUSD in 2007 was because of  
22 LAUSD’s unlawful Prop. 39 Policies. Those policies include many facilities allocation criteria  
23 beyond Prop. 39 that LAUSD uses to deny facilities to public school students attending charter  
24 schools. For example, the illegal Prop. 39 Policies purport to allow LAUSD to refuse to make  
25 facilities available to public school students attending charter schools if it creates “an unfair  
26 burden on District-operated programs and students.” That provision incorrectly presumes that  
27 students attending LAUSD traditional district schools and programs in those LAUSD traditional  
28 district schools always outrank students attending charter schools. This is a clear violation of

1 Prop. 39's decree that "public school facilities should be shared fairly among all public school  
2 pupils, including those in charter schools." (Ed. Code, § 47614 subd. (a) [emphasis added].)

3 130. A district's actions "in responding to a Prop. 39 facilities request must comport  
4 with the evident purpose of the Act to equalize the treatment of charter and district-run schools  
5 with respect to the allocation of space between them." (*Ridgecrest Charter School v. Sierra*  
6 *Sands Unified School Dist.* (2005) 130 Cal.App.4th 986, 1002.) "[T]o the maximum extent  
7 practicable, the needs of the charter school must be given the same consideration as those of the  
8 district-run schools, subject to the requirement that the facilities provided to the charter school  
9 must be "contiguous." (*Id.*) In this sense, LAUSD must give "equal consideration to the  
10 'district' and charter school students." (*Id.*)

11 131. Section 5 of the Settlement Agreement required LAUSD, within 60 days of the  
12 effective date of the Amended Implementing Regulations (*i.e.*, by May 30, 2008), to:

13 [R]escind its Prop. 39 policies (including the March 2004 LAUSD  
14 Report No. 257-03-04 titled "Policies and Procedures Regarding  
15 Allocation of Facilities to Charter Schools Under Education Code  
16 Section 47614," pertaining to facilities allocations to charter  
schools) and . . . replace them with a policy that is compliant with  
the Amended Implementing Regulations."

17 In breach of Section 5 of the Settlement Agreement, LAUSD failed to comply with this clear  
18 mandatory duty. Even now, nearly two years past the deadline to which LAUSD committed,  
19 LAUSD has still failed to rescind its illegal Prop. 39 Policies and adopt new, lawful policies.

20 132. Although CCSA was not required to do so, in an effort to help LAUSD meet the  
21 May 30, 2008, deadline, CCSA put considerable effort into working with LAUSD to revise the  
22 Prop. 39 Policies so that they could come closer to complying with Prop. 39. LAUSD and  
23 CCSA eventually agreed to the language for a revised Prop. 39 policy around June 23, 2008,  
24 which was already past the May 30, 2008 deadline.

25 133. LAUSD staff failed to present the revised policy to its Board at the subsequent  
26 meeting. In fact, the revised Prop. 39 policy has never has been presented to the Board. Instead,  
27 LAUSD's illegal policy that it promised to rescind two years ago remains in place to this day.

1           134. While it failed entirely to fulfill its legal and contractual obligation to rescind its  
2 illegal Prop. 39 Policies, in stark contrast LAUSD managed to adopt a new authorizing policy  
3 that increases its oversight and control of charter schools, *i.e.*, the LAUSD Policy for Charter  
4 School Authorizing (adopted by Board of Education on January 12, 2010). In taking on this  
5 additional program, LAUSD has demonstrated that it is more than capable of adopting new  
6 policies that it is motivated to adopt.

7           135. In its March 19, 2010, Demand Letter, CCSA demanded that LAUSD comply  
8 with Section 5 of the Settlement Agreement by rescinding the illegal LAUSD policies and  
9 adopting the revised policy previously agreed upon by LAUSD's staff. LAUSD has not  
10 rescinded its illegal Prop. 39 Policies.

11 **G. LAUSD Is Also Breaching Section 6 Of The Settlement Agreement Because It Failed**  
12 **To Make Good Faith Efforts To Secure Funding And Complete The Comprehensive**  
13 **Inventory Of LAUSD Facilities**

14           136. In the process of reviewing LAUSD's performance under Prop. 39, it has become  
15 evident that LAUSD operates its real estate assets in a surprisingly erratic and subjective fashion.

16           137. During negotiations of the Settlement Agreement and in LAUSD's responses to  
17 Public Records Act requests seeking information about LAUSD's real estate assets, LAUSD has  
18 stated that it does not have an inventory of its own real estate assets.

19           138. This lack of basic information is puzzling. How can LAUSD comply with Prop.  
20 39 or, even more basically, use its taxpayer-funded real estate in a responsible fashion, if it does  
21 not even know what real estate it has? How can LAUSD continue to ask voters in the LAUSD  
22 jurisdiction for more funding for buildings when the District cannot accurately articulate the real  
23 estate assets it already has?

24           139. As a matter of fiduciary responsibility, it would seem that LAUSD was (and is)  
25 required to create an inventory of its own real estate assets so that LAUSD can use appropriate  
26 information when it makes decisions to allocate those assets. Nevertheless, LAUSD refused to  
27 do so unless special funding was found to create such an inventory. Accordingly, Section 6 of  
28 the Settlement Agreement required LAUSD and CCSA to work in good faith and use their

1 mutual best efforts to secure funding to create a comprehensive inventory of LAUSD facilities.  
2 If funding was available, LAUSD had to perform a comprehensive facilities inventory.

3 140. As with the rest of its obligations under the Settlement Agreement, LAUSD failed  
4 to meet its obligations here in breach of Section 6 of the Settlement Agreement. Shortly after the  
5 Settlement Agreement was executed, LAUSD insisted that it would cost \$2 million to create an  
6 inventory. That sum was (and is) inexplicably high and LAUSD never provided any support for  
7 that unreasonable and arbitrary number.

8 141. Despite that unsupported sum, CCSA tried to help find third-party funding for an  
9 inventory. However, this proved impossible given the factual circumstances. First, it was clear  
10 that such an inventory was a basic obligation already expected from any public entity with  
11 widespread real estate assets. Moreover, such an inventory would primarily benefit LAUSD  
12 itself. Finally, it appeared that the creation of such an inventory could be funded from LAUSD's  
13 massive real estate and construction budget with little additional effort on LAUSD's part.

14 142. CCSA is informed and believes and thereon alleges that, for its part, LAUSD  
15 made no effort whatsoever to raise money for the facilities inventory. The only effort LAUSD  
16 made was to "offer" that it would be willing to take money out of a small fraction of bond funds  
17 that were allocated to charter schools and use that money to create the District's facilities  
18 inventory. In other words, LAUSD was willing to take more away from charter schools in order  
19 to fund the inventory of its own assets.

20 143. CCSA is informed and believes and thereon alleges that LAUSD made up an  
21 unreasonably high cost estimate for the inventory to create a barrier that would be impossible to  
22 overcome, because LAUSD prefers to avoid taking an inventory of its own facilities so that  
23 LAUSD can continue to assert falsely that it does not have space for public school students  
24 attending charter schools.

25 144. Not having an inventory has added self-interest and subjectivity to the process of  
26 determining available facilities. As it stands, CCSA is informed and believes and thereon alleges  
27 that LAUSD relies on LAUSD principals to self-report whether their school sites have space to  
28 share with charter school students. CCSA is informed and believes and thereon alleges that there

1 is no desire or incentive for any of those principals to share the facilities with schools they often  
2 view as competitors of their own programs, so principals make no serious effort to do so.

3 145. Whatever its motives, it is apparent that LAUSD violated its duty in Section 6 of  
4 the Settlement Agreement by making no efforts to find funding for a facilities inventory and by  
5 arbitrarily setting a high sum for such an inventory that made it impossible for CCSA to find  
6 funding. LAUSD's conduct is a breach of Section 6 of the Settlement Agreement as well as a  
7 breach of the covenant of good faith and fair dealing implied into the Settlement Agreement.

8 146. In its March 19, 2010, Demand Letter, CCSA demanded that LAUSD comply  
9 with Section 6 by examining its own staff and financial resources to determine how it can create  
10 an inventory of its real estate holdings, and by moving forward with an inventory of its facilities.  
11 In taking these actions, LAUSD can begin to manage its assets as the taxpayers have a right to  
12 expect and for the benefit of the students who need responsible allocations of those assets.  
13 (Exh. E, p.14-15.) On information and belief, CCSA alleges that LAUSD has not started the  
14 required inventory process.

15 **H. LAUSD Is Also Breaching Section 7 Of The Settlement Agreement Because It Failed**  
16 **To Produce The Required Five-Year Facilities Plan That Meets The Projected**  
17 **Needs Of Students Attending Charter Schools**

18 147. Section 7 of the Settlement Agreement required LAUSD to begin a facilities  
19 planning process with CCSA to produce a five-year facilities plan that meets the projected needs  
20 of public school students attending charter schools. The LAUSD Board was required to adopt  
21 that plan by December 31, 2008 – over 17 months ago – but LAUSD failed to do so.

22 148. CCSA expended extensive resources to facilitate preparation of the five-year  
23 facilities plan. CCSA went to great effort to project the needs of charter schools. CCSA  
24 employees spent weeks on the phone with charter school operators gathering information to  
25 provide to LAUSD for the joint facilities planning process. As a result of those efforts, by  
26 August 2008 – well in advance of the December 31, 2008 deadline – CCSA provided LAUSD  
27 with a spreadsheet noting the information that LAUSD needed to produce the required five-year  
28

1 facilities plan. Further, CCSA proactively scheduled meetings with LAUSD, preparing detailed  
2 agendas for those meetings, and presented a timeline designed to meet the deadline.

3 149. In contrast, LAUSD failed to act in good faith, thereby subjecting CCSA to a  
4 wasteful process that was never going to produce the five-year facilities plan required by the  
5 Settlement Agreement. That process consisted of a series of meetings with a constantly  
6 changing group of LAUSD representatives. LAUSD unilaterally invited an ever-expanding  
7 group of both LAUSD and non-LAUSD individuals to those meetings, which undermined any  
8 hope of genuine progress towards preparation of the required five-year facilities plan.

9 150. LAUSD's conduct here demonstrates that it allowed bureaucratic gamesmanship  
10 to obstruct progress toward meeting this mandatory duty. Rather than create an efficient and  
11 manageably sized group of LAUSD staff with sufficient seniority and expertise to make a real  
12 five-year plan to meet the needs of public school students attending charter schools, LAUSD  
13 engaged in an unwieldy and unproductive process that amounted in no tangible benefit.

14 151. LAUSD's conduct is a breach of Section 7 of the Settlement Agreement as well  
15 as a breach of the implied covenant of good faith and fair dealing.

16 152. In its March 19, 2010, Demand Letter, CCSA notified LAUSD of its failure to  
17 perform in accordance with Section 7 of the Settlement Agreement. As of the filing of this  
18 complaint, LAUSD has not complied with the terms of the agreement.

19 **V.**

20 **FIRST CAUSE OF ACTION**

21 **(AGAINST ALL DEFENDANTS)**

22 **(BREACH OF SETTLEMENT AGREEMENT FOR FAILURE TO MAKE**  
23 **FACILITIES OFFERS PURSUANT TO PROP. 39)**

24 153. CCSA re-alleges and incorporates by reference each and every allegation  
25 contained in the paragraphs in this complaint above.

26 154. At the time the parties entered into the Settlement Agreement, the consideration  
27 was adequate and the Settlement Agreement was just and reasonable as to Defendants.  
28

1           155. CCSA has performed or substantially performed all conditions and covenants  
2 required on its part to be performed in accordance with the terms and conditions of the  
3 Settlement Agreement.

4           156. As alleged above, Defendants have failed and refused, and continue to fail and  
5 refuse, to perform pursuant to Paragraph 3 of the Settlement Agreement by failing to make any  
6 facilities offer whatsoever to numerous CCSA member charter schools that submitted facilities  
7 requests that comply with Prop. 39 and also by illegally withdrawing numerous Prop. 39  
8 facilities offers that it did make.

9           157. Moreover, by operation of law, the Settlement Agreement contains an implied  
10 covenant of good faith and fair dealing requiring the parties thereto not to do anything that will  
11 deprive the other party of the benefits of the Settlement Agreement. In acting in the manner  
12 alleged above Defendants also violated the implied covenant of good faith and fair dealing.

13           158. Such actions by Defendants frustrated the benefits that CCSA was to receive  
14 under the Settlement Agreement.

15           159. Defendants' obligations pursuant to the Settlement Agreement are sufficiently  
16 certain to make the precise acts that are to be done clearly ascertainable.

17           160. For the reasons stated heretofore, CCSA has no adequate legal remedy in that  
18 money damages cannot compensate CCSA for Defendants' failure to provide facilities to  
19 CCSA's member schools pursuant to Prop. 39 as required by Section 3 of the Settlement  
20 Agreement.

21           161. CCSA is entitled to specific performance of the terms, conditions and provisions  
22 of Section 3 of the Settlement Agreement. CCSA requests that Defendants be ordered to  
23 perform pursuant to the terms of Section 3 of the Settlement Agreement as more fully described  
24 in the prayer for relief below.

25           162. Moreover, as evidenced by LAUSD's consistent, pervasive and continuing  
26 breaches of Prop. 39, its Implementing Regulations, and the Settlement Agreement, it is clear  
27 that unless and until restrained by order of this Court the Defendants will continue to proceed in  
28 a manner that forces CCSA and its members to suffer great and irreparable harm in that they will

1 not have facilities to house the public school students that they serve. CCSA is also entitled to a  
2 preliminary injunction and a permanent injunction commanding Defendants to comply with  
3 Section 3 of the Settlement Agreement as more fully described in the prayer for relief below.

4 163. To compel LAUSD to follow the law and comply with the promises it made under  
5 the Settlement Agreement, CCSA requests that this Court step in to ensure that public school  
6 students attending charter schools will no longer be treated like second-class citizens. To ensure  
7 that such an injunction is not an empty promise, CCSA requests that this Court appoint a special  
8 master to aid it to compel LAUSD, finally, to follow the law.

9 **VI.**

10 **SECOND CAUSE OF ACTION**

11 **(AGAINST ALL DEFENDANTS)**

12 **(BREACH OF SETTLEMENT AGREEMENT FOR MAKING FACILITIES**

13 **OFFERS THAT VIOLATE PROP. 39)**

14 164. CCSA re-alleges and incorporates by reference each and every allegation  
15 contained in the paragraphs in this complaint above.

16 165. As alleged above, Defendants have failed and refused, and continue to fail and  
17 refuse, to perform pursuant to Paragraph 3 of the Settlement Agreement by making facilities  
18 offer to numerous CCSA member charter schools that fail to comply with Prop. 39 and the Prop.  
19 39 Implementing Regulations.

20 166. Moreover, by operation of law, the Settlement Agreement contains an implied  
21 covenant of good faith and fair dealing requiring the parties thereto not to do anything that will  
22 deprive the other party of the benefits of the Settlement Agreement. Defendants took advantage  
23 of charter schools needing sites by exacting concessions from them in the form of: changes to  
24 charter school schedules to conform to district schedules; requiring charter schools to use district  
25 services for meals; changing space allocations; and a host of other overreaching actions in breach  
26 of the covenant of good faith and fair dealing implied into section 3 of the Settlement  
27 Agreement. LAUSD took advantage of the fact that charter schools are often desperate to find  
28 space to educate the public school students in their care and are often in virtually powerless

1 bargaining positions. As it has in the past, LAUSD continued to use that imbalance of power to  
2 force charter schools to consent to LAUSD demands that violate Prop. 39. In acting in this  
3 manner Defendants also violated the implied covenant of good faith and fair dealing.

4 167. Such actions by Defendants frustrated the benefits that CCSA was to receive  
5 under the Settlement Agreement.

6 168. Defendants' obligations pursuant to the Settlement Agreement are sufficiently  
7 certain to make the precise acts that are to be done clearly ascertainable.

8 169. For the reasons stated heretofore, CCSA has no adequate legal remedy in that  
9 money damages cannot compensate CCSA for Defendants' failure to provide facilities to  
10 CCSA's member schools pursuant to Prop. 39 as required by Section 3 of the Settlement  
11 Agreement.

12 170. CCSA is entitled to specific performance of the terms, conditions and provisions  
13 of Section 3 of the Settlement Agreement. CCSA requests that Defendants be ordered to  
14 perform pursuant to the terms of Section 3 of the Settlement Agreement as more fully described  
15 in the prayer for relief below.

16 171. Moreover, as evidenced by LAUSD's consistent, pervasive and continuing  
17 breaches of Prop. 39, its Implementing Regulations, and the Settlement Agreement, it is clear  
18 that unless and until restrained by order of this Court the Defendants will continue to proceed in  
19 a manner that forces CCSA and its members to suffer great and irreparable harm in that they will  
20 not have facilities to house the public school students that they serve.

21 172. CCSA is entitled to a preliminary injunction and a permanent injunction  
22 commanding Defendants to comply with Section 3 of the Settlement Agreement as more fully  
23 described in the prayer for relief below.

24 173. To compel LAUSD to follow the law and comply with the promises it made under  
25 the Settlement Agreement, CCSA requests that this Court step in to ensure that public school  
26 students attending charter schools will no longer be treated like second-class citizens. To ensure  
27 that such an injunction is not an empty promise, CCSA requests that this Court appoint a special  
28 master to aid it to compel LAUSD, finally, to follow the law.

VII.

**THIRD CAUSE OF ACTION**

**(AGAINST ALL DEFENDANTS)**

**(BREACH OF SETTLEMENT AGREEMENT FOR FAILURE TO  
NEGOTIATE A FORM USE AGREEMENT THAT COMPLIES WITH PROP. 39)**

174. CCSA re-alleges and incorporates by reference each and every allegation contained in the paragraphs in this complaint above.

175. As alleged above, Defendants have failed and refused, and continue to fail and refuse, to perform pursuant to Section 4 of the Settlement Agreement. In breach of Section 4 of the Settlement Agreement, Defendants failed to negotiate a Form Use Agreement in good faith and ultimately imposed a Form Use Agreement on CCSA that does not comply with Prop. 39.

176. Moreover, by operation of law, the Settlement Agreement contains an implied covenant of good faith and fair dealing requiring the parties thereto not to do anything that will deprive the other party of the benefits of the Settlement Agreement. Defendants made it impossible for the parties to negotiate a Form Use Agreement that complies “with Prop. 39 and the implementing regulations” as required by Section 4 of the Settlement Agreement by refusing to agree to terms required by Prop. 39 and by causing the negotiations to take so long that CCSA was forced to yield to a Form Use Agreement that included terms that were contrary to Prop. 39 in order that its members would have a Form Use Agreement prior to the start of the 2008-2009 school year. In acting in this manner Defendants also violated the implied covenant of good faith and fair dealing.

177. Such actions by Defendants frustrated the benefits that CCSA was to receive under the Settlement Agreement.

178. Defendants’ obligations pursuant to the Settlement Agreement are sufficiently certain to make the precise acts that are to be done clearly ascertainable.

179. For the reasons stated heretofore, CCSA has no adequate legal remedy in that money damages cannot compensate CCSA for Defendants’ failure to negotiate a Form Use Agreement that complies with Prop. 39 as required by Section 4 of the Settlement Agreement.

180. CCSA is entitled to specific performance of the terms, conditions and provisions of Section 4 of the Settlement Agreement. CCSA requests that Defendants be ordered to perform pursuant to the terms of Section 4 of the Settlement Agreement as more fully described in the prayer for relief below.

181. Moreover, as evidenced by LAUSD's consistent, pervasive and continuing breaches of Prop. 39, its Implementing Regulations, and the Settlement Agreement, it is clear that unless and until restrained by order of this Court the Defendants will continue to proceed in a manner that forces CCSA and its members to suffer great and irreparable harm in that they will not have facilities to house the public school students that they serve.

182. CCSA is entitled to a preliminary injunction and a permanent injunction commanding Defendants to comply with Section 4 of the Settlement Agreement as more fully described in the prayer for relief below.

183. To compel LAUSD to follow the law and comply with the promises it made under the Settlement Agreement, CCSA requests that this Court step in to ensure that public school students attending charter schools will no longer be treated like second-class citizens. To ensure that such an injunction is not an empty promise, CCSA requests that this Court appoint a special master to aid it to compel LAUSD, finally, to follow the law.

## VIII.

#### **FOURTH CAUSE OF ACTION**

**(AGAINST ALL DEFENDANTS)**

**(BREACH OF SETTLEMENT AGREEMENT FOR FAILURE TO  
RESCIND UNLAWFUL PROP. 39 POLICY)**

184. CCSA re-alleges and incorporates by reference each and every allegation contained in the paragraphs in this complaint above.

185. As alleged above, Defendants have failed and refused, and continue to fail and refuse, to perform pursuant to Section 5 of the Settlement Agreement. In breach of Section 5 of the Settlement Agreement, Defendants failed to rescind LAUSD's unlawful Prop. 39 Policies and replace them with a new legally-compliant policy as mandated by the Settlement Agreement.

1           186. Moreover, by operation of law, the Settlement Agreement contains an implied  
2 covenant of good faith and fair dealing requiring the parties thereto not to do anything that will  
3 deprive the other party of the benefits of the Settlement Agreement which Defendants have  
4 similarly breached.

5           187. Such actions by Defendants frustrated the benefits that CCSA was to receive  
6 under the Settlement Agreement.

7           188. Defendants' obligations pursuant to the Settlement Agreement are sufficiently  
8 certain to make the precise acts that are to be done clearly ascertainable.

9           189. For the reasons stated heretofore, CCSA has no adequate legal remedy in that  
10 money damages cannot compensate CCSA for Defendants' failure to rescind its illegal Prop. 39  
11 Policies as required by Section 5 of the Settlement Agreement.

12           190. CCSA is entitled to specific performance of the terms, conditions and provisions  
13 of Section 5 of the Settlement Agreement. CCSA requests that Defendants be ordered to  
14 perform pursuant to the terms of Section 5 of the Settlement Agreement as more fully described  
15 in the prayer for relief below.

16           191. Moreover, as evidenced by LAUSD's consistent, pervasive and continuing  
17 breaches of Prop. 39, its Implementing Regulations, and the Settlement Agreement, it is clear  
18 that unless and until restrained by order of this Court the Defendants will continue to proceed in  
19 a manner that forces CCSA and its members to suffer great and irreparable harm in that they will  
20 not have facilities to house the public school students that they serve.

21           192. CCSA is entitled to a preliminary injunction and a permanent injunction  
22 commanding Defendants to comply with Section 5 of the Settlement Agreement as more fully  
23 described in the prayer for relief below.

24           193. To compel LAUSD to follow the law and comply with the promises it made under  
25 the Settlement Agreement, CCSA requests that this Court step in to ensure that public school  
26 students attending charter schools will no longer be treated like second-class citizens. To ensure  
27 that such an injunction is not an empty promise, CCSA requests that this Court appoint a special  
28 master to aid it to compel LAUSD, finally, to follow the law.

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**IX.**

**FIFTH CAUSE OF ACTION**

**(AGAINST ALL DEFENDANTS)**

**(BREACH OF SETTLEMENT AGREEMENT FOR FAILURE TO  
MAKE GOOD FAITH EFFORTS TO SECURE FUNDING FOR AND COMPLETE THE  
COMPREHENSIVE INVENTORY OF LAUSD FACILITIES)**

194. CCSA re-alleges and incorporates by reference each and every allegation contained in the paragraphs in this complaint above.

195. As alleged above, Defendants have failed and refused, and continue to fail and refuse, to perform pursuant to Section 6 of the Settlement Agreement. In breach of Section 6 of the Settlement Agreement, Defendants failed to make good faith efforts to secure funding for and complete the comprehensive inventory of LAUSD facilities.

196. Moreover, by operation of law, the Settlement Agreement contains an implied covenant of good faith and fair dealing requiring the parties thereto not to do anything that will deprive the other party of the benefits of the Settlement Agreement. Defendants breached the covenant of good faith and fair dealing in regard to Section 6 of the Settlement Agreement by making no efforts to find funding for a facilities inventory and by arbitrarily setting a high sum for such an inventory that made it impossible for CCSA to find funding.

197. Such actions by Defendants frustrated the benefits that CCSA was to receive under the Settlement Agreement.

198. Defendants' obligations pursuant to the Settlement Agreement are sufficiently certain to make the precise acts that are to be done clearly ascertainable.

199. For the reasons stated heretofore, CCSA has no adequate legal remedy in that money damages cannot compensate CCSA for Defendants' failure to secure funding and complete the comprehensive inventory of LAUSD facilities as required by Section 6 of the Settlement Agreement.

200. CCSA is entitled to specific performance of the terms, conditions and provisions of Section 6 of the Settlement Agreement. CCSA requests that Defendants be ordered to

1 perform pursuant to the terms of Section 6 of the Settlement Agreement as more fully described  
2 in the prayer for relief below.

3 201. Moreover, as evidenced by LAUSD's consistent, pervasive and continuing  
4 breaches of Prop. 39, its Implementing Regulations, and the Settlement Agreement, it is clear  
5 that unless and until restrained by order of this Court the Defendants will continue to proceed in  
6 a manner that forces CCSA and its members to suffer great and irreparable harm in that they will  
7 not have facilities to house the public school students that they serve.

8 202. CCSA is entitled to a preliminary injunction and a permanent injunction  
9 commanding Defendants to comply with Section 6 of the Settlement Agreement as more fully  
10 described in the prayer for relief below.

11 203. To compel LAUSD to follow the law and comply with the promises it made under  
12 the Settlement Agreement, CCSA requests that this Court step in to ensure that public school  
13 students attending charter schools will no longer be treated like second-class citizens. To ensure  
14 that such an injunction is not an empty promise, CCSA requests that this Court appoint a special  
15 master to aid it to compel LAUSD, finally, to follow the law.

16 **X.**

17 **SIXTH CAUSE OF ACTION**

18 **(AGAINST ALL DEFENDANTS)**

19 **(BREACH OF SETTLEMENT AGREEMENT FOR FAILURE TO**

20 **PRODUCE THE FIVE-YEAR FACILITIES PLAN)**

21 204. CCSA re-alleges and incorporates by reference each and every allegation  
22 contained in the paragraphs in this complaint above.

23 205. As alleged above, Defendants have failed and refused, and continue to fail and  
24 refuse, to perform pursuant to Section 7 of the Settlement Agreement. In breach of Section 7 of  
25 the Settlement Agreement, Defendants failed to produce the five-year facilities plan that meets  
26 the projected needs of students attending charter schools.

27 206. Moreover, by operation of law, the Settlement Agreement contains an implied  
28 covenant of good faith and fair dealing requiring the parties thereto not to do anything that will

1 deprive the other party of the benefits of the Settlement Agreement. Defendants breached the  
2 covenant of good faith and fair dealing in regard to Section 7 of the Settlement Agreement by  
3 setting meetings with CCSA and conducting those meetings in a manner that caused CCSA to  
4 engage in a wasteful process that was never going to produce the five-year facilities plan  
5 required by the Settlement Agreement, such as, for example, causing the process to consist of a  
6 series of meetings with a constantly changing group of LAUSD representatives and unilaterally  
7 inviting an ever-expanding group of both LAUSD and non-LAUSD individuals to those  
8 meetings, which undermined any genuine progress towards preparation of the required five-year  
9 facilities plan

10 207. Such actions by Defendants frustrated the benefits that CCSA was to receive  
11 under the Settlement Agreement.

12 208. Defendants' obligations pursuant to the Settlement Agreement are sufficiently  
13 certain to make the precise acts that are to be done clearly ascertainable.

14 209. For the reasons stated heretofore, CCSA has no adequate legal remedy in that  
15 money damages cannot compensate CCSA for Defendants' failure to prepare a five-year  
16 facilities plan that meets projected needs of charter schools as required by Section 7 of the  
17 Settlement Agreement.

18 210. CCSA is entitled to specific performance of the terms, conditions and provisions  
19 of Section 7 of the Settlement Agreement

20 211. CCSA requests that Defendants be ordered to perform pursuant to the terms of  
21 Section 7 of the Settlement Agreement as more fully described in the prayer for relief below.

22 212. Moreover, as evidenced by LAUSD's consistent, pervasive and continuing  
23 breaches of Prop. 39, its Implementing Regulations, and the Settlement Agreement, it is clear  
24 that unless and until restrained by order of this Court the Defendants will continue to proceed in  
25 a manner that forces CCSA and its members to suffer great and irreparable harm in that they will  
26 not have facilities to house the public school students that they serve.



**XII.**  
**EIGHTH CAUSE OF ACTION**  
**(AGAINST ALL DEFENDANTS)**  
**(DECLARATORY RELIEF RE FAILURE TO PROVIDE PROP. 39-COMPLIANT**  
**FACILITIES OFFERS TO CHARTER SCHOOLS)**

219. CCSA re-alleges and incorporates by reference each and every allegation contained in the paragraphs in this complaint above.

220. On April 9, 2015, the Supreme Court issued its opinion in this case, *California Charter Schools Association v. Los Angeles Unified School District* (2015) 60 Cal.4th 1221, 1236, (“CCSA v. LAUSD”), unanimously finding, among other things, that the Implementing Regulations require Prop. 39 facilities offers to be made in a “transparent method” to allow “charter schools and the public to readily verify whether a district has complied with [Prop 39].” A charter school should not be forced to “compel [a school district] through litigation to demonstrate reasonable equivalence.” (*Ibid.*)

221. After the issuance of the Supreme Court opinion in *CCSA v. LAUSD*, CCSA and LAUSD agreed that CCSA may supplement and/or amend this complaint to update the eighth cause of action to address LAUSD’s Prop. 39 facilities offers made to charter schools for the 2016-2017 school year.

222. CCSA’s member schools operating in LAUSD properly submitted to LAUSD legally compliant written requests for facilities under Prop. 39 and the Implementing Regulations for their respective charter schools for the 2016-2017 school year.

223. Despite the California Supreme Court’s decision in this case, and the clear legal mandates in Prop. 39 and the Implementing Regulations, LAUSD’s preliminary and final facilities offers to charter schools for the 2016-2017 school year failed to comply with the law.

224. In making offers for the 2016-2017 school year, LAUSD failed to offer charter schools reasonably equivalent facilities to those provided to LAUSD-run schools. Disregarding the Supreme Court’s mandate in this case, LAUSD continued to follow a practice of giving preference to LAUSD-run schools. LAUSD’s actions did not comport with the purpose of Prop.

39 to equalize the treatment of charter and district students with respect to the allocation of space between them. LAUSD failed to give the same consideration to the needs of charter students as those of district students, in violation of Prop. 39 and the Implementing Regulations.

**A. LAUSD's Preliminary Offers For The 2016-2017 School Year Did Not Contain Adequate Information Regarding Comparison Group Schools**

225. LAUSD failed to comply with the requirement of Prop. 39 and the Implementing Regulations that preliminary offers contain a list and description of comparison group schools used in developing its preliminary offers. Without such detailed description of the comparison group schools, charter schools had no ability to determine whether the space they were being offered was reasonably equivalent to the space offered to district-run schools.

226. A school district must meaningfully and in good faith assess all of the comparison group schools' facilities in order to make a legally compliant facilities offer to a charter school under Prop. 39. Despite that legal mandate, as CCSA made clear in a letter it sent to LAUSD on March 23, 2016, LAUSD's preliminary offers for the 2016-2017 school year provided insufficient information regarding the classroom space at the comparison schools. A true and correct copy of that letter is attached hereto as **Exhibit Q** and incorporated herein by reference.

**B. LAUSD Failed To Follow The Legally Required Methodology For Calculating The Number Of Classrooms To Offer Charter Schools**

227. LAUSD's Prop. 39 offers for the 2016-2017 school year failed to follow the classroom allocation methodology prescribed by Prop. 39, the Implementing Regulations, and the California Supreme Court. CCSA is informed and believes that LAUSD continues to allocate classrooms in the same manner as it did prior to the Supreme Court's opinion in *CCSA v. LAUSD* by counting only those classrooms staffed with a teacher as classrooms that are "provided to" district students at comparison group schools. However, "counting classrooms provided to K-12 students is not tantamount to counting classrooms staffed by teachers." (*CCSA v. LAUSD, supra*, 60 Cal.4th at 1228.) The fact that a classroom is not staffed by a teacher does not, by itself, mean that it should not be counted as a classroom in determining the ADA/classroom ratio. A classroom that is used for K-12 student activities may qualify as a

1 classroom provided to K-12 students, even if it is not staffed by a teacher specifically assigned to  
2 that classroom. (*CCSA v. LAUSD*, *supra*, 60 Cal.4th at 1240.)

3 228. LAUSD's offers failed to include an accurate number of teaching stations  
4 (classrooms) at the comparison group schools. CCSA is informed and believes that in preparing  
5 preliminary and final offers to charter schools for the 2016-2017 school year, LAUSD used  
6 documents entitled "Capacity Assessment Reports" ("CAR documents") to determine how many  
7 exclusive use classrooms to allocate to charter schools. Based on the CAR documents, CCSA is  
8 informed and believes that LAUSD improperly set-aside classrooms that should have been  
9 considered classrooms "provided to" students attending the comparison group schools, and thus  
10 should have been included in the ADA/classroom ratio for the 2016-2017 school year offers.  
11 Accordingly, CCSA is informed and believes that LAUSD has unlawfully withheld available  
12 classrooms from public charter school students by restricting the denominator of the  
13 ADA/classroom ratio at comparison group schools to those classrooms staffed with a teacher—  
14 the exact same approach as LAUSD's "norming ratios," which the Supreme Court has held  
15 cannot be used to allocate classroom space to charter schools.

16 **C. LAUSD Improperly Refused To Provide Kitchen Space To Charter Schools In The**  
17 **2016-2017 Facilities Offers**

18 229. LAUSD's Prop. 39 offers for the 2016-2017 school year do not allow charter  
19 schools to physically occupy kitchens at LAUSD school sites. Prop. 39 is clear that LAUSD is  
20 obligated to "allocate and/or provide access to non-teaching station space, [which] . . . includes,  
21 but is not limited to . . . kitchen." (Cal. Code Regs., tit. 5, § 11969.3(b)(3).) LAUSD's Prop. 39  
22 offers for the 2016-2017 school year failed to comply with this requirement.

23 **D. Declaratory Relief Is Appropriate Here**

24 230. An actual controversy has arisen and now exists between CCSA and Defendants.  
25 CCSA alleges that many of the facilities offers made by LAUSD to charter schools do not  
26 comply with Prop. 39. Defendants assert that LAUSD has complied with Prop. 39.

27 231. CCSA needs a judicial determination of its legal rights and Defendants' legal  
28 duties. Such declaration is necessary and appropriate at this time to ensure that LAUSD

1 complies with its statutory duties, and is necessary to protect the rights of the CCSA's member  
2 charter schools and the general public. Such a declaration is especially critical because, absent a  
3 clear declaration that LAUSD is breaking the law, LAUSD will continue to break the law  
4 causing great and irreparable harm to public school students in charter schools. Unless such a  
5 judicial determination is granted, CCSA member public charter schools and the students served  
6 by CCSA member charter schools will suffer irreparable injury in that they will be deprived of  
7 their fair share of public school facilities space as granted by Prop. 39.

8 232. By reason of the foregoing, CCSA is entitled to a declaration and judgment that  
9 LAUSD's facilities offers for the 2016-2017 school year violated Prop. 39 and the Implementing  
10 Regulations, and that LAUSD must make proper facilities offers for the 2017-2018 school year  
11 and subsequent years.

### 12 XIII.

#### 13 NINTH CAUSE OF ACTION

#### 14 (AGAINST ALL DEFENDANTS)

#### 15 (DECLARATORY RELIEF RE FORM USE AGREEMENT)

16 233. CCSA re-alleges and incorporates by reference each and every allegation  
17 contained in the paragraphs in this complaint above.

18 234. An actual controversy has arisen and now exists between CCSA and Defendants.  
19 CCSA alleges that Prop. 39 and the Implementing Regulations provide charter schools with the  
20 statutory right to take care of ongoing M&O themselves at LAUSD facilities they are occupying  
21 pursuant to Prop. 39. Yet Defendants claim that LAUSD can require charter schools to pay for  
22 LAUSD to perform that M&O, at great expense to the charter school.

23 235. CCSA needs a judicial determination of its legal rights and Defendants' legal  
24 duties. Such declaration is necessary and appropriate at this time to ensure that LAUSD  
25 complies with law, and is necessary to protect the rights of the CCSA's member charter schools  
26 and the general public. Such a declaration is especially critical because, absent a clear  
27 declaration that LAUSD is breaking the law, LAUSD will continue to break the law by forcing  
28

1 charter schools occupying LAUSD facilities pursuant to Prop. 39 to pay exorbitant M&O  
2 charges causing great and irreparable harm to public school students in charter schools.

3 236. By reason of the foregoing, CCSA is entitled to a declaration and judgment that  
4 charter schools that occupy LAUSD facilities pursuant to Prop. 39 have a statutory right to take  
5 care of ongoing M&O themselves and that LAUSD cannot require them to pay for LAUSD  
6 provided M&O services.

7 **XIV.**

8 **TENTH CAUSE OF ACTION**

9 **(AGAINST ALL DEFENDANTS)**

10 **(DECLARATORY RELIEF RE UNLAWFUL LAUSD PROP. 39 POLICY)**

11 237. CCSA re-alleges and incorporates by reference each and every allegation  
12 contained in the paragraphs in this complaint above.

13 238. An actual controversy has arisen and now exists between CCSA and Defendants.  
14 CCSA alleges that LAUSD's Prop. 39 Policies do not comply with Prop. 39. CCSA is informed  
15 and believes and thereon alleges that LAUSD asserts that its Prop. 39 Policies are not unlawful.

16 239. CCSA needs a judicial determination of its legal rights and Defendants' legal  
17 duties. Such declaration is necessary and appropriate at this time to ensure that LAUSD  
18 complies with its statutory duties, and is necessary to protect the rights of the CCSA's member  
19 charter schools and the general public. Such a declaration is especially critical because, absent a  
20 clear declaration that LAUSD is breaking the law, LAUSD will continue to break the law  
21 causing great and irreparable harm to students in charter schools.

22 240. By reason of the foregoing, CCSA is entitled to a declaration and judgment that  
23 LAUSD's Prop. 39 Policies are unlawful.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, CCSA prays for judgment on this complaint as follows:

26 **ON THE FIRST CAUSE OF ACTION**

27 a. That Defendants be ordered to specifically perform the Settlement  
28 Agreement by making final facilities offers to charter schools for the 2010-2011 school year and

1 subsequent years in compliance with Prop. 39 and the Implementing Regulations, in accordance  
2 with Section 3 of the Settlement Agreement;

3 b. That this Court issue a permanent injunction, and a preliminary injunction  
4 if CCSA so moves, commanding Defendants to perform in accordance with Section 3 of the  
5 Settlement Agreement by making final facilities offers to charter schools for the 2010-2011  
6 school year and subsequent years in compliance with Prop. 39 and the Implementing  
7 Regulations; and

8 c. For the Court to appoint a special master at LAUSD's expense to assist the  
9 Court in ensuring that LAUSD performs as required by the terms of the Settlement Agreement.

10 **ON THE SECOND CAUSE OF ACTION**

11 a. That Defendants be ordered to specifically perform the Settlement  
12 Agreement by making final facilities offers to charter schools for the 2010-2011 school year and  
13 subsequent years in compliance with Prop. 39 and the Implementing Regulations, in accordance  
14 with Section 3 of the Settlement Agreement;

15 b. That this Court issue a permanent injunction, and a preliminary injunction  
16 if CCSA so moves, commanding Defendants to perform in accordance with Section 3 of the  
17 Settlement Agreement by making final facilities offers to charter schools for the 2010-2011  
18 school year and subsequent years in compliance with Prop. 39 and the Implementing  
19 Regulations; and

20 c. For the Court to appoint a special master at LAUSD's expense to assist the  
21 Court in ensuring that LAUSD performs as required by the terms of the Settlement Agreement.

22 **ON THE THIRD CAUSE OF ACTION**

23 a. That Defendants be ordered to specifically perform the Settlement  
24 Agreement by modifying the Form Use Agreement to comply Prop. 39 and the Implementing  
25 Regulations in accordance with Section 4 of the Settlement Agreement and in sufficient time to  
26 place such a revised Form Use Agreement in effect during the next school year;

27 b. That this Court issue a permanent injunction, and a preliminary injunction  
28 if CCSA so moves, commanding Defendants to perform in accordance with Section 4 of the

1 Settlement Agreement by modifying the Form Use Agreement to comply Prop. 39 and the  
2 Implementing Regulations in sufficient time to place such a revised Form Use Agreement in  
3 effect during the next school year; and

4 c. For the Court to appoint a special master at LAUSD's expense to assist the  
5 Court in ensuring that LAUSD performs as required by the terms of the Settlement Agreement.

6 **ON THE FOURTH CAUSE OF ACTION**

7 a. That Defendants be ordered to specifically perform the Settlement  
8 Agreement by rescinding its illegal Prop. 39 Policies and replacing them in accordance with  
9 Section 5 of the Settlement Agreement with a legally compliant policy;

10 b. That this Court issue a permanent injunction, and a preliminary injunction  
11 if CCSA so moves, commanding Defendants to perform in accordance with Section 5 of the  
12 Settlement Agreement by rescinding its illegal Prop. 39 Policies and replacing them with a  
13 legally compliant policy; and

14 c. For the Court to appoint a special master at LAUSD's expense to assist the  
15 Court in ensuring that LAUSD performs as required by the terms of the Settlement Agreement.

16 **ON THE FIFTH CAUSE OF ACTION**

17 a. That Defendants be ordered to specifically perform the Settlement  
18 Agreement by examining its own staff and financial resources to determine how it can create an  
19 inventory of its real estate holdings, and by moving forward and producing an inventory of its  
20 facilities in accordance with Section 6 of the Settlement Agreement;

21 b. That this Court issue a permanent injunction, and a preliminary injunction  
22 if CCSA so moves, commanding Defendants to perform in accordance with Section 6 of the  
23 Settlement Agreement by examining its own staff and financial resources to determine how it  
24 can create an inventory of its real estate holdings, and by moving forward with and producing an  
25 inventory of its facilities; and

26 c. For the Court to appoint a special master at LAUSD's expense to assist the  
27 Court in ensuring that LAUSD performs as required by the terms of the Settlement Agreement.  
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1 **ON THE SIXTH CAUSE OF ACTION**

2 a. That Defendants be ordered to specifically perform the Settlement  
3 Agreement by immediately appointing a group of not more than three LAUSD employees,  
4 including the Executive Director of the Innovation and Charter Schools Division, to meet with  
5 CCSA and with a firm deadline to create a five-year plan as required under Section 7 of the  
6 Settlement Agreement;

7 b. That this Court issue a permanent injunction, and a preliminary injunction  
8 if CCSA so moves, commanding Defendants to perform in accordance with Section 7 of the  
9 Settlement Agreement by immediately appointing a group of not more than three LAUSD  
10 employees, including the Executive Director of the Innovation and Charter Schools Division, to  
11 meet with CCSA and with a firm deadline to create a five-year plan as required under Section 7  
12 of the Settlement Agreement; and

13 c. For the Court to appoint a special master at LAUSD's expense to assist the  
14 Court in ensuring that LAUSD performs as required by the terms of the Settlement Agreement.

15 **ON THE SEVENTH CAUSE OF ACTION**

16 That the Court declare the respective rights and duties of the parties, and that by  
17 such declaration and judgment it be declared that LAUSD violated Prop. 39 when it failed to  
18 provide any facilities whatsoever to CCSA member charter schools that submitted Prop. 39  
19 compliant requests for facilities.

20 **ON THE EIGHTH CAUSE OF ACTION**

21 That the Court declare the respective rights and duties of the parties, and that by  
22 such declaration and judgment be it declared that LAUSD's Prop. 39 facilities offers for the  
23 2016-2017 school year violated Prop. 39 and the Implementing Regulations, and that LAUSD  
24 must make proper facilities offers for the 2017-2018 school year and subsequent years.

25 **ON THE NINTH CAUSE OF ACTION**

26 That the Court declare the respective rights and duties of the parties, and that by  
27 such declaration and judgment it be declared that charter schools that occupy LAUSD facilities  
28

1 pursuant to Prop. 39 have a statutory right to take care of ongoing M&O themselves and that  
2 LAUSD cannot require them to pay for LAUSD provided M&O services.

3 **ON THE TENTH CAUSE OF ACTION**

4 That the Court declare the respective rights and duties of the parties, and that by  
5 such declaration and judgment it be declared that CCSA is entitled to a declaration and judgment  
6 that LAUSD's Prop. 39 Policies are unlawful.

7 **ON ALL CAUSES OF ACTION**

- 8 a. For the Court to exercise continuing jurisdiction over this action to ensure that  
9 LAUSD complies with the order of specific performance, declaration, and  
10 injunction of this Court;  
11 b. For the recovery in full of CCSA's costs and attorneys' fees incurred in this action  
12 under Code of Civil Procedure section 1021.5; and  
13 c. Such other relief as the Court may find appropriate.

14  
15 Dated: June 1, 2016

Respectfully submitted,

16 LATHAM & WATKINS LLP  
17 James L. Arnone  
18 Winston P. Stromberg  
19 Lucas I. Quass

20 CALIFORNIA CHARTER SCHOOLS  
21 ASSOCIATION  
22 Phillipa L. Altmann

23 By 

24 Winston P. Stromberg  
25 Attorneys for Plaintiff  
26 California Charter Schools Association  
27  
28

# EXHIBIT A



Library and Staff Area at Frederick Douglass Academy Elementary Charter School



Meeting Area for Student Break Out Groups at  
Frederick Douglass Academy Elementary Charter School

# EXHIBIT B



**Entire Administrative Office Space offered to New West Charter Middle School  
by LAUSD at Marina del Rey Middle School**



**Lunch Space offered to New West Charter Middle School by  
LAUSD at Marina del Rey Middle School**

# EXHIBIT C



Lunch Space given by LAUSD to Ivy Academia Charter School at  
Sunny Brae Elementary School

# EXHIBIT D

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of April ~~22~~ 2008 ("Effective Date"), by and between the California Charter Schools Association ("CCSA"), a California nonprofit public benefit corporation, Partnerships to Uplift Communities ("PUC"), a California nonprofit public benefit corporation, Luz Lopez, Jacqueline Duvivier, Green Dot Public Schools ("Green Dot"), a California nonprofit public benefit corporation, Pedro Barrera, David Buchanan, Felisa Fuentes, Juanita Garcia, Lorene Horton, and Lisa Martinez (collectively "Petitioners"), on the one hand, and the Los Angeles Unified School District ("LAUSD"), the Board of Education of the Los Angeles Unified School District ("LAUSD Board"), and David Brewer III in his capacity as LAUSD's Superintendent of Schools (collectively "Respondents"), on the other hand. Petitioners and Respondents, and each of them, are referred to cumulatively as the "Parties" or singularly as a "Party." The Parties intend by this Agreement to settle the lawsuits titled *California Charter Schools Association, et al. v. Los Angeles Unified School District, et al.*, Los Angeles County Superior Court Case No. BS108934, AAA Case No. 72 181 00850 07 LOPE, and *California Charter Schools Association, et al. v. Los Angeles Unified School District, et al.*, Los Angeles County Superior Court Case No. BS108936, AAA Case No. 72 181 00851 07 LOPE, both of which lawsuits were filed with the Los Angeles County Superior Court on May 17, 2007, and, following court orders compelling mediation and arbitration, both of which lawsuits were submitted to the American Arbitration Association which initiated case files for them on August 21, 2007 (collectively "Litigations").

## RECITALS

WHEREAS, on November 7, 2000, California voters modified Education Code section 47614 ("Proposition 39") to include the requirement "that public school facilities should be shared fairly among all public school pupils, including those in charter schools;"

WHEREAS, Petitioners commenced the Litigations alleging that LAUSD unlawfully denied charter schools' facilities requests and failed to comply with Proposition 39 and Title 5 Cal. Code Reg. 11969.1 – 11969.9 ("Implementing Regulations") by: (1) expressly denying facilities to charter schools entitled to them; (2) sending letters characterized as facilities offers to charter schools when those letters made only indefinite and conditional statements about the potential for facilities to be made available to those charter schools; (3) sending letters stating that charter schools were on a facilities waitlist without making any actual facilities available to them; (4) failing to follow the affirmative steps and deadlines required under the Implementing Regulations; and (5) having and implementing policies and practices that discriminate against public school students attending charter schools;

WHEREAS, LAUSD denied each and all of Petitioners' allegations in the Litigations and further alleged, among other things, that: (1) LAUSD faces severe overcrowding on LAUSD-run campuses, does not have sufficient facilities to serve public school students attending LAUSD-run campuses adequately, and therefore cannot make facilities available to most charter schools; and (2) LAUSD cannot be required to make its scarce facilities available to charter schools where doing so would unfairly burden students attending LAUSD-run schools;

WHEREAS, the State Board of Education, on January 9, 2008, adopted amendments to the Implementing Regulations ("Amended Implementing Regulations") that address, among other things, the elements that a school district's facilities offer to qualified charter schools seeking district facilities must contain and the timing for such offers, which Amended Implementing Regulations have been sent to the Office of Administrative Law for its review and approval; and

WHEREAS, rather than continuing to expend resources on the Litigations, the Parties desire to resolve and settle all disputes between the Parties involving the Litigations.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants, promises and undertakings set forth herein and other consideration, the receipt and adequacy of which the Parties hereby acknowledge, Petitioners and Respondents agree as follows:

1. Term. This Agreement shall remain in effect from the Effective Date to and including June 30, 2013, unless extended by mutual agreement of LAUSD and CCSA.

2. Animo Venice High School. LAUSD and Green Dot shall negotiate in good faith and use their mutual best efforts to agree to a Proposition 39-compliant facilities use agreement for Green Dot's Animo Venice High School no later than six weeks following the Effective Date.

3. Future Facilities Offers. Provided that a CCSA member charter school submits a future facilities request that is legally sufficient under Proposition 39 and any Proposition 39 implementing regulations in effect at that time, LAUSD shall make a facilities offer to that charter school that complies with Proposition 39 and any Proposition 39 implementing regulations in effect at that time. This obligation shall apply to requests for facilities that are submitted for the 2008-2009 school year, shall inure to the benefit of all CCSA member charter schools, including without limitation to PUC and Green Dot, and shall continue for the term of this Agreement.

4. Form Facilities Use Agreement. CCSA and LAUSD shall negotiate in good faith and use their mutual best efforts to agree to a form facilities use agreement ("CCSA Use Agreement") that can be used, with appropriate modifications as needed to accommodate school-specific conditions, by all CCSA member charter schools in the district making Proposition 39 requests for facilities. The CCSA Use Agreement shall set forth the respective obligations and responsibilities of LAUSD and of a CCSA member charter school using LAUSD space, with respect to operation, maintenance, security, insurance, possession, and charges for the use of space. The CCSA Use Agreement shall: (a) be finalized by May 15, 2008; (b) comply with Proposition 39 and the implementing regulations; (c) be offered for use by any CCSA member school accepting a Proposition 39 facilities offer for the 2008-2009 school year and thereafter until the expiration of this Agreement; and (d) only be changed by mutual agreement of CCSA and LAUSD.

5. Amended Proposition 39 Policies. Within 60 days of the effective date of the Amended Implementing Regulations, LAUSD shall rescind its existing Proposition 39 policies (including the March 2004 LAUSD Report No. 257-03-04, titled "Policies and Procedures Regarding Allocation of Facilities to Charter Schools Under Education Code Section 47614," pertaining to facilities allocations to charter schools) and shall replace them with a policy that is compliant with the Amended Implementing Regulations.

a. LAUSD's amended policy shall provide that each charter school that makes a legally compliant facilities request shall be entitled to a timely, legally compliant (under Proposition 39 and the Amended Implementing Regulations) offer of facilities at a LAUSD facility, and that the offered space shall be reasonably equivalent to that space which charter school students would occupy if they attended LAUSD-operated schools. The amended policy shall state that, in order to share school facilities fairly under Proposition 39, the needs of the educational program for LAUSD students may not make it possible to provide facilities offers to charter schools at each LAUSD school. Reasonable efforts to identify reasonably equivalent facilities may require that offers be made outside the High School Attendance Area in which a charter school's request for facilities is made. LAUSD shall thereafter revise its policy to accommodate any future changes in the Proposition 39 implementing regulations promulgated by the State Board of Education, doing so within a reasonable period of time. Nothing in this agreement restricts LAUSD from advocating for changes to the Proposition 39 implementing regulations as the LAUSD, in its sole discretion, believes to be in LAUSD's best interests.

b. While the Petitioners do not agree that the factors listed below should be considered under Proposition 39, Petitioners recognize the need to share fairly the burdens caused by inadequate space in all LAUSD public schools for all public school students. LAUSD's policy will recognize that LAUSD would not be able to make space available to a charter school at a LAUSD-owned school site in the following situations:

(i) LAUSD would not be required to make space available where doing so would require a LAUSD school to convert to a multi-track, year-round calendar or to remain on a multi-track year-round calendar. Nor will LAUSD offer space to a charter school on a multi-track basis unless the charter school is currently operating on a multi-track calendar in LAUSD-owned space, the school on which the space is being offered is operating on a multi-track calendar, or the charter school authorizes such an offer.

(ii) LAUSD would not be required to make space available where doing so would require LAUSD students to involuntarily ride a bus to school.

(iii) LAUSD would not be required to make space available where doing so would restrict the LAUSD school or charter school from the ability to maintain full-day kindergarten at schools where kindergarten is offered.

(iv) LAUSD would not be required to make space available where doing so would require a LAUSD school to continue or begin a traveling teacher program, or would increase the number of teachers on the campus forced

to "travel" due to a lack of available classroom space, unless the number of teaching stations offered to a charter school recognized the need for the charter school teachers to travel, as well.

(v) LAUSD would not be required to make space available where doing so would restrict the ability of a LAUSD school to maintain appropriate space and set-aside rooms for the maintenance of the following LAUSD programs and policies, while recognizing the need to provide for the reasonable shared use of such space and set-aside rooms with charter schools. Set-aside space and rooms allocated for any such use shall be shared according to a formula to be agreed upon between LAUSD and CCSA, in consideration of the following:

- a) Each LAUSD school shall be able to operate a parent center;
- b) Each LAUSD school shall be able to maintain Learning Centers for special and general education students;
- c) Each LAUSD middle and high school shall be able to maintain a School Based Health Clinic;
- d) LAUSD schools shall be able to maintain assessment centers for pre-school youngsters, room for occupational therapy and physical therapy, sufficient space for special day class youngsters (SWD), adequate space for small group work for the school psychologist, speech and language therapists, and other professional services; and
- e) Each LAUSD school shall be able to maintain reasonable space for computer and science labs, multimedia and technology rooms, and textbook rooms.

c. The determination of when reasonably equivalent facilities are being shared fairly with charter school students will include, but not be limited to, the acknowledgement that each LAUSD school must respect the class sizes mandated by the 2006-2009 United Teachers of Los Angeles collective bargaining agreement and state law, including the K-3 Class Size Reduction program and SB 1133 (2006) (codified at Education Code section 52055.700, *et seq.*). Offers of facilities will recognize the need to share fairly the burdens caused by inadequate space in LAUSD schools for all public school students.

d. The LAUSD policy will further reflect:

(i) Early childhood education programs and adult programs in LAUSD facilities as of the 2007-08 school year may remain in the space they currently use; and

a) Early childhood education programs may be expanded to elementary school sites not currently accommodating those programs

provided LAUSD remains able to offer Proposition 39 compliant space somewhere in LAUSD, and as close to the general geographic area requested by a charter school as reasonably possible.

b) The expansion of any adult education programs (to the extent they are not serving a grade 9-12 population) located on a K-12 campus shall first respect the need to make a legally compliant offer of facilities to charter schools making requests under Proposition 39.

(ii) Each LAUSD and charter school shall be able to utilize space on secondary schools necessary to implement and operate small learning communities, including space for teacher planning and meetings and administration for small learning communities.

(iii) Each LAUSD and charter school shall be able to participate in any new state programs for which funding has been made available, provided the planning process set forth below for charter student seats adjusts to account for changes in available space.

6. Comprehensive Facilities Inventory.

a. Completing the Inventory. LAUSD and CCSA shall work in good faith and use their mutual best efforts to secure funding for a comprehensive inventory of LAUSD facilities, as described below. To the extent funding is available, LAUSD shall substantially complete a comprehensive facilities inventory ("Facilities Inventory"), as follows, by March 30, 2009. The failure to secure sufficient funding to complete the Facilities Inventory in accordance with this section 6 of this Agreement shall not affect LAUSD's obligations under any other provisions of this Agreement.

(i) The Facilities Inventory shall be undertaken by an independent consultant selected by LAUSD, upon consultation with CCSA, and shall identify the existence, location and usage of all physical plant space and real estate owned or controlled by LAUSD.

(ii) The Facilities Inventory shall determine the number of teaching stations, specialized classrooms, and all non-teaching station space, in addition to identifying all unutilized or underutilized space that can potentially be made available to charter schools under Proposition 39. This information shall be organized by site.

b. Maintaining Inventory Accuracy. Following the completion of the comprehensive Facilities Inventory, LAUSD shall maintain the Facilities Inventory as an ongoing asset for at least four years at LAUSD's expense. LAUSD shall annually certify the Facilities Inventory's accuracy.

c. Public Availability of Inventory. The Facilities Inventory shall be publicly available. However, subject only to the California Public Records Act, LAUSD may protect the confidentiality of diagrams of individual school sites or administrative buildings, the

release of which might compromise security and safety of those schools, and may seek to protect as proprietary any information that concerns the value of individual assets of LAUSD. CCSA shall be given access to facilities inventory data that provides the information described in subdivision (a) of this section.

7. Joint Facilities Planning Process. LAUSD and CCSA shall immediately begin a facilities planning process to produce a five-year facilities plan that meets the projected needs of charter schools. In consultation with CCSA, LAUSD shall complete a comprehensive facilities planning process for LAUSD-provided facilities to charter schools. The LAUSD Board shall adopt this plan by December 31, 2008. The LAUSD Board shall retain its authority to amend the New Construction Strategic Execution Plan as necessary and appropriate, but shall remain obligated to ensure that the five-year charter facilities plan provides a realistic means to meet the needs of charter school students for at least the term of this Agreement. The five-year plan shall meet the requirements set forth below.

a. The plan shall provide for LAUSD's full compliance with its obligations under Proposition 39 and the implementing regulations then in effect based upon the projected growth of qualifying charter schools. In addition, the plan shall respect the principles underlying LAUSD's New Construction Strategic Execution Plan, specifically the provision of seats to LAUSD students in neighborhood schools, on traditional calendars at class sizes reflecting those in existence in 2001-02, with targeted maximum campus sizes for elementary schools at 650 students, middle schools at 1,500 students and high schools at 2,000 students, with full-day kindergarten in elementary schools and small learning communities or small schools of 500 or fewer students co-located on secondary school campuses.

b. The plan shall identify the five-year projected facilities needs for charter school students not otherwise occupying LAUSD facilities and who are reasonably anticipated to attend charter schools making requests under Proposition 39. CCSA will make reasonable efforts to provide data within its control to LAUSD sufficient to allow LAUSD to assess the projected five-year need for charter facilities.

c. The plan shall identify methods for providing facilities to meet that projected need through a combination of the following, while respecting LAUSD's priorities identified in subdivision (a) above:

- (i) Space on existing LAUSD facilities, including space created through reasonable reconfiguration of attendance areas, programmatic offerings, etc.;
- (ii) Shared space on new LAUSD facilities;
- (iii) Stand-alone facilities developed specifically for charter schools;
- (iv) Augmentation of new facilities being planned; and
- (v) Creation of satellite facilities on existing LAUSD campuses.

d. The plan shall identify the funding for providing these facilities, utilizing funding from existing local bond measures (including such funding as may be available from the charter, new construction and innovation funding lines for each local bond measure); state bond funding, including state funding specifically identified for charter school facilities; and potential future state and local bond measures, as well as a plan for identifying sources of funds to bridge the gaps in currently available funding to complete the plan for charter facilities.

e. The planning process shall include a comprehensive examination of multiple alternative methods for delivering facilities to charter schools. These multiple alternative methods include, but are not limited to:

- (i) The use of LAUSD-owned land for facilities for charter schools;
- (ii) The ability of LAUSD to establish revolving funds or otherwise provide loan guarantees to facilitate private funding for charter school facilities development;
- (iii) The creation of facilities to incubate start-up charters;
- (iv) Condemnation of property for charter school use;
- (v) Exercising zoning exemptions for charter schools in private facilities and LAUSD Facilities Services Division support with the permit process.

Nothing in this Agreement shall obligate LAUSD to utilize any particular one of the above-listed potential strategies, set forth in section 7(e) above, in adopting or executing the plan for charter facilities.

f. Charter schools shall remain free, but only at their own discretion, to enter into debt or leases not funded by LAUSD to create facilities.

8. Dismissal of Litigations. Immediately upon all Parties' execution of this Agreement, Petitioners shall dismiss the Litigations in full, both in Los Angeles County Superior Court and in the American Arbitration Association. The Superior Court will have no continuing jurisdiction over this Agreement.

9. Releases. Petitioners hereby release and forever discharge Respondents and all of Respondents' officers, board members, attorneys, representatives, employees, agents, members, and each of them, from all claims and causes of action existing on or before the Effective Date that were alleged in the Litigations, and from any and all claims for attorneys' fees or costs incurred in or related in any way to the Litigations. Respondents hereby release and forever discharge Petitioners and all of Petitioners' officers, board members, attorneys, representatives, employees, agents, members, and each of them, from any and all claims for attorneys' fees or costs incurred in or related in any way to the Litigations. All Parties shall bear their own attorneys' fees and costs in connection with the Litigations and this Agreement.

10. Enforcement of this Agreement. The obligations of LAUSD contained in this Agreement may be enforced only by CCSA in an action brought in any court of competent jurisdiction, and no dispute resolution process contained in any charter petition shall apply to the enforcement of this agreement. CCSA shall be the only party with the right and authority to bring an action to enforce LAUSD's obligations in this Agreement, except that: (a) Section 2 (re: Animo Venice High School) may be enforced by Green Dot without regard to any dispute resolution process contained in any charter petition; and (b) Section 3 (re: Future Facilities Offers) may be enforced by Green Dot or PUC with respect to the facilities offers for the 2008-2009 school year without regard to any dispute resolution process contained in any charter petition. This Agreement is not, and shall not be construed as, a consent decree nor shall it be construed to provide any third-party beneficiary rights to any charter schools or persons who are not parties to this Agreement.

11. Amendments. Notwithstanding the fact that there are more Parties to this Agreement than LAUSD and CCSA, this Agreement may be modified by LAUSD and CCSA alone, provided that any such modification is in writing and is executed by both LAUSD and CCSA. Notwithstanding the previous sentence, Section 2 of this Agreement may only be modified by both LAUSD and Green Dot, and Sections 3, 4 and 10 of this Agreement may only be modified by all of LAUSD, CCSA, PUC and Green Dot, provided that any such modification is in writing and is executed by the appropriate Parties.

12. CCSA Support to Enforce Settlement. In the event a CCSA member charter school makes a claim, files a lawsuit or initiates a dispute resolution process against LAUSD seeking facilities in a manner that contradicts this Agreement, CCSA will provide such assistance and provide such services as are reasonably requested by LAUSD in the furtherance of any defense of the claim, lawsuit, or dispute resolution process including, but not limited to, providing declarations from CCSA employees and voluntarily making CCSA employees available for deposition, provided that LAUSD is in compliance with this Agreement.

13. Entire Agreement. This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any previous oral or written statements or agreements concerning the subject matter hereof.

14. Construction, Choice of Law and Venue. The terms of this Agreement are the product of arms-length negotiations between the Parties, through their respective counsel of choice, and no provision shall be construed against the drafter thereof. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any disputes concerning this Agreement shall be in Los Angeles County.

15. Counterparts and Fax/Email Execution. This Agreement may be executed in counterparts which, taken together, shall constitute one and the same agreement. This Agreement may also be executed and/or delivered by facsimile transmission or email and in such event all facsimile or emailed signatures shall be deemed originals for all purposes hereof.

16. Authority. Each signatory to this Agreement represents and warrants that he or she is authorized to sign this Agreement on behalf of the Party for which he or she is signing, and thereby to bind that Party fully to the terms of this Agreement.

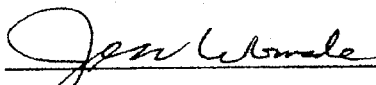
17. Severability. If any portion of this Agreement as applied to any Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in another circumstance, or the validity or enforceability of this Agreement as a whole.

18. Incorporation of Recitals. The recitals contained herein are hereby incorporated by this reference and are binding upon the Parties hereto.


19. No Admissions. This Agreement is a compromise of disputes and claims and is intended as an attempt to avoid further litigation over the matters covered herein. Nothing herein is, nor shall be deemed or construed in any way as, an admission or concession of any legal or factual issue. Neither this Agreement, the fact that this Agreement was approved, nor any provision in this Agreement may be used in any other context to imply any concession of any legal or factual issue.

**AGREED TO AND ACCEPTED AS OF THE EFFECTIVE DATE:**


**Los Angeles Unified School District**

By:   
Title: Gerald Board

**Board of Education of the Los Angeles  
Unified School District**

By:   
Title: Board President

**Superintendent David Brewer, III**

By:   
Title: \_\_\_\_\_

**California Charter Schools Association**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**Green Dot Public Schools**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**Partnerships to Uplift Communities**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**Pedro Barrera**

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**David Buchanan**

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**Felisa Fuentes**

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**Juanita Garcia**

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**Lorene Horton**

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**Lisa Martinez**

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**Luz Lopez**

\_\_\_\_\_

**Jacqueline Duvivier**

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**Superintendent David Brewer, III**

By: \_\_\_\_\_

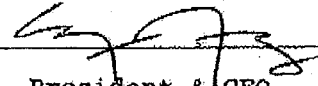
Title: \_\_\_\_\_

**Board of Education of the Los Angeles  
Unified School District**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**California Charter Schools Association**

By:  \_\_\_\_\_

Title: **President & CEO**

**Green Dot Public Schools**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Partnerships to Uplift Communities**

By: \_\_\_\_\_

Title: \_\_\_\_\_

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**Jacqueline Duvivier**

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Title: \_\_\_\_\_

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Superintendent David Brewer, III

California Charter Schools Association

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Green Dot Public Schools

Partnerships to Uplift Communities

By:  \_\_\_\_\_

By: \_\_\_\_\_

Title: PRESIDENT & CEO

Title: \_\_\_\_\_

Pedro Barrera

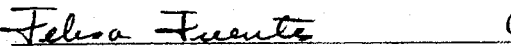
David Buchanan

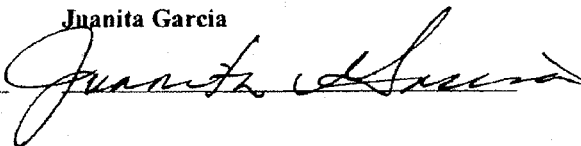


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Felisa Fuentes

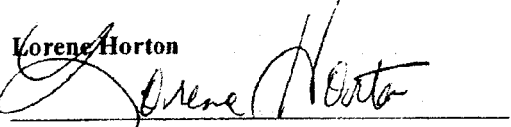
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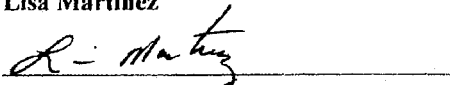




Lorene Horton

Lisa Martinez





Luz Lopez

Jacqueline Duvivier

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Title: \_\_\_\_\_

**Partnerships to Uplift Communities**

By:  \_\_\_\_\_

Title: Co-CEO

**David Buchanan**

\_\_\_\_\_

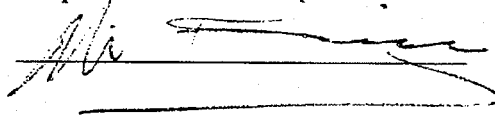
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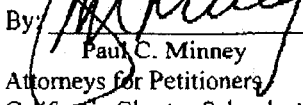
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# EXHIBIT E



tel: (619) 619-704-0404 2468 Historic Decatur Rd., Ste. 130, San Diego, CA 92106

[www.myschool.org](http://www.myschool.org)

March 19, 2010

**VIA FEDEX and E-MAIL**

David Holmquist  
General Counsel  
Los Angeles Unified School District  
Administrative Office  
333 South Beaudry Avenue, 24th Floor  
Los Angeles, CA 90017

Re: Request that LAUSD Comply with Proposition 39 and Settlement Agreement

Dear Mr. Holmquist:

I write to you on behalf of the California Charter Schools Association ("CCSA") and its membership in respect to facilities placements under Proposition 39 ("Prop. 39"). More specifically, this letter serves as a more detailed request to the Los Angeles Unified School District ("LAUSD") that it comply with both Prop. 39, and the terms of the April 22, 2008, settlement agreement between LAUSD and CCSA ("Settlement Agreement").

The Settlement Agreement resolved a 2007 lawsuit and attendant claims that CCSA, Green Dot Public Schools ("Green Dot"), and Partnerships to Uplift Communities ("PUC") were compelled to bring against LAUSD because LAUSD had refused to follow the terms of Prop. 39, the voter-enacted law that requires public school facilities to be allocated fairly for the benefit of all public school students, including those public school students attending charter schools.

Despite these obligations, LAUSD continues to violate Prop. 39 and has failed to comply with the Settlement Agreement. Specific examples of the violations and breaches include:

- (1) LAUSD's continued failures to make compliant offers to charter school Prop. 39 applicants;
- (2) LAUSD's failure to negotiate meaningfully a legally compliant facilities use agreement;
- (3) LAUSD's failure to rescind its illegal Prop. 39 Policy;
- (4) LAUSD's failure to inventory its real estate holdings properly for purposes of Prop. 39 site allocations; and

- (5) LAUSD's failure to engage effectively in the process of developing a five-year charter school facilities plan with CCSA and produce a plan pursuant to those efforts.

CCSA and its membership have been exceedingly patient with LAUSD and have made repeated efforts at raising the issues in relation to LAUSD's lack of compliance. Unfortunately, these efforts have resulted in insufficient returns.

LAUSD's non-compliance with Prop. 39 and the Settlement Agreement cannot continue. There must be some way for LAUSD to achieve tangible and compliant results under the terms of Prop. 39 and the Settlement Agreement.

I want to be clear that CCSA only asks for its members what the law entitles them and their students to expect – that the public school facilities under LAUSD's control be allocated fairly so that all public school students have equal access to them.

At the end of the day, we are talking about public school students within the boundaries of LAUSD. What would LAUSD do if all 60,000 charter students decided to come back to district schools tomorrow? Would LAUSD tell these students that they did not count toward ADA? Would LAUSD tell them that they did not yet have space for them, but that the District would keep looking and let these students know when and if the District finds space? Would LAUSD provide these children with one seat to share among five students?

The point of these questions is to drive home LAUSD's legal obligations: This is not a discretionary matter or a question of whether Prop. 39 might be convenient or comfortable. This is not a question of offering "surplus" or "available" space. This law dictates that all facilities must be shared on equal footing.

Accordingly, CCSA requests that LAUSD begin to comply with Prop. 39 and the terms of the Settlement Agreement now by taking the following actions:

- (1) Making compliant offers to the 81 Prop. 39 applicants that have requested facilities for the 2010-2011 school year;
- (2) Revising the noncompliant terms of the facilities use agreement ("FUA");
- (3) Rescinding the illegal Prop. 39 Policy and adopting the policy negotiated with CCSA, as LAUSD previously committed itself to doing;
- (4) Taking inventory of LAUSD's real estate holdings for purposes of Prop. 39 site allocations; and
- (5) Developing a meaningful and substantive five-year charter school facilities plan with CCSA.

Below we further delineate each of the primary Prop. 39 violations and Settlement Agreement breaches and our requests related to each. It is our sincere hope that these matters will have swift and significant resolution. Otherwise, CCSA will have no choice but to seek judicial intervention and court-ordered control over the Prop. 39 process.

**Specific Examples of LAUSD's Failures to Comply with Prop. 39 and the Terms of the Settlement Agreement**

**1. LAUSD's Continued Failure to Make Prop. 39 Compliant Facilities Offers to Charter Schools Violates Prop. 39 and Section 3 of the Settlement Agreement.**

As you know, on November 7, 2000, California voters passed Prop. 39, which amended California's Education Code to include the requirement "that public school facilities should be shared fairly among all public school pupils, *including those in charter schools.*" (Ed. Code, § 47614, subd. (a) [emphasis added].) This statute clearly directs that "[e]ach school district *shall make available*, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students in *conditions reasonably equivalent* to those in which the students would be accommodated if they were attending other public schools of the district." (*Id.*, at subd. (b) [emphasis added].)

With the passage of Prop. 39, California voters established that districts, such as LAUSD, may not discriminate against public charter school students in facilities allocations. Prop. 39 recognizes that public school facilities were paid for by state and local taxpayers for the benefit and service of *all* California public school students, not just for those attending district-run campuses. Accordingly, those public school facilities must be shared fairly among all public school students.

Prop. 39's implementing regulations, codified at Title 5 of the California Code of Regulations ("CCR") Sections 11969.1 through 11969.11 ("Implementing Regulations")<sup>1</sup>, reinforce the broad principle that districts must provide public school students attending charter schools adequate facilities on par with students attending district-run schools.

To achieve that legal mandate, the Implementing Regulations create a series of affirmative steps and deadlines all districts must follow. All districts must:

- (1) Receive annual Prop. 39 facilities requests from charter schools submitted on or before November 1 of each year, review the charter school's projections of in-district and total average daily attendance ("ADA") and in-district and total classroom ADA, and, on or before December 1 of each year, express any objections in writing and state the projections the district considers reasonable (CCR, tit. 5, § 11969.9, subd. (d));

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<sup>1</sup> The term "Prop. 39" as used in this letter includes the Implementing Regulations.

- (2) Allow the charter school to respond on or before January 2 to any objections expressed by the district and to the district's ADA projections (*Id.*, subd. (e));
- (3) Identify the proper comparison group of schools for determining the allocation of "reasonably equivalent" facilities by capacity and condition, make efforts to provide a facility where the charter school wishes to locate, and provide a preliminary offer of facilities on or before February 1 which includes a draft of any proposed agreement pertaining to the charter schools' use of the space and the projected "pro rata share" amount for the cost of the facilities offered to the charter school and a description of the methodology used to determine that amount (*Id.*, subd. (f));
- (4) Allow the charter school the opportunity to respond to the preliminary offer on or before March 1 (*Id.*, subd. (g)); and
- (5) Issue a final offer of facilities on or before April 1 that responds to any concerns and/or counter proposals by the charter school and specifically identifies the number of classrooms, specialized classrooms, and non-classroom based space to be provided, arrangements for sharing space with district-operated programs, the in-district classroom ADA assumptions for the charter school upon which the allocation is based, the "pro rata share" fee to be charged, and other terms and conditions. (*Id.*, subd. (h).)

In addition to the District's statutory and regulatory obligations, LAUSD assumed contractual responsibility for compliance in its Settlement Agreement with CCSA. In Section 3 of the Settlement Agreement, LAUSD commits that if a CCSA member school makes a facilities request that complies with Prop. 39 and the Implementing Regulations, "LAUSD *shall* make a facilities offer to that charter school that complies with Proposition 39 and any Prop. 39 implementing regulations in effect at that time." (Settlement Agreement, Sect. 3.)

Despite the statutory, regulatory and contractual obligations, LAUSD continues to violate both the terms of Prop. 39 and the Settlement Agreement.

- (a) Exemplar Violations - Set 1: By Rescinding Offers to Charter Schools, LAUSD Violated the Settlement Agreement Immediately After its Execution.

Despite both the statutory requirements and Section 3's unequivocal contractual duty, LAUSD began violating its mandates before the ink on Settlement Agreement was even dry.

On April 22, 2008, the same day that the Settlement Agreement was executed, the District sent a series of inter-office memoranda to the Members of the Board of Education ("Board") addressing charter school co-locations at schools such as Taft High

School and Fairfax High School. These actions set LAUSD on a pathway toward an immediate breach of Section 3.

In the course of the April 22<sup>nd</sup> memoranda, the District acknowledged its legal obligation to provide facilities to charter schools under Prop. 39 and the Settlement Agreement. The District also noted an increased need for charter school seats among LAUSD public charter school students.

After recounting the District's obligations, LAUSD undercut the terms of Prop. 39 by asserting that LAUSD would comply *unless* the District determined that collocations would result in detriment to instructional programs. Specifically, the District noted that "[f]oregoing the co-location . . . is not a viable alternative *unless I find that the co-location is clearly detrimental to the education of charter or non-charter school students.*" (See, e.g., Exhibit A, April 22, 2008 Inter-Office Correspondence from Ray Cortines to Board and David L. Brewer III regarding Taft High School; April 22, 2008 Inter-Office Correspondence from Ray Cortines to Board and David L. Brewer III regarding Fairfax High School, emphasis added.)

On April 30, 2008, in violation of Prop. 39 and the Settlement Agreement, the District sent another memorandum to the Board, this time stating that the District had "*decided to withdraw . . . seven offers based upon impacts the charter co-location would impose.*" (See Exhibit B, April 30, 2008 Inter-Office Correspondence from Ray Cortines to Board and David L. Brewer III, emphasis added.) That same day, seven charter schools, including CALS Middle School and New West Charter Middle School, received letters withdrawing LAUSD's facilities offers.

Each of the unlawful rescissions stated that the District had "reassessed [the] offer and .... concluded that the campus of [the school where the co-location was to occur] cannot be shared fairly among the non-charter and charter school students *because the co-location may have a detrimental impact* on the education of all the students on this campus." (See, e.g., Exhibit C, April 30, 2008 Letter from Ray Cortines to CALS Middle School; April 30, 2008 Letter from Ray Cortines to New West Charter School, emphasis added.)

Those actions had no lawful basis. In fact, the Los Angeles Superior Court in *New West Charter Middle School v. LAUSD*, Los Angeles Superior Court Case No. BS115979, confirmed the illegality of this type of action in granting New West's petition for writ of mandate and entered a judgment against LAUSD. (See Exhibit D, September 5, 2008 Tentative Decision on Petition for Writ of Mandate, *New West Charter Middle School v. LAUSD*; October 3, 2008 Judgment Granting Peremptory Writ of Mandate and Order, *New West Charter Middle School v. LAUSD*.) Notably, the court recognized that LAUSD's conduct was "*patently unreasonable and unlawful*," its justification for actions taken constituted a "Parade of Unproven Horribles," and that it had "*a duty to accommodate New West somewhere.*" (See *id.*, September 5, 2008 Tentative Decision on Petition for Writ of Mandate, *New West Charter Middle School v. LAUSD*, at pp. 4-6, emphasis added.)

Despite the court's order that LAUSD "fulfill its Proposition 39 duty" and provide New West with a legally sufficient offer of space, LAUSD still failed to rectify its unlawful behavior and comply with the writ.

In granting New West's motion to enforce the writ, the court held that the space LAUSD offered to New West at Logan Elementary "could not possibly meet the requirements that a comparison of middle schools in that District would provide." (See Exhibit E, November 21, 2008 Tentative Decision on Motion to Enforce Writ, *New West Charter Middle School v. LAUSD*, at p. 4.) Among other significant deficiencies in the offer, the court noted that "LAUSD staff explained that New West's middle schools students would have no access to any library, computer lab, multi-purpose auditorium, or cafeteria areas. New West's designated student 'eating area' was outdoors and barely separated by a wall from LAUSD's garbage dumpsters, which have a bad odor." (*Id.* at p. 3.)

As you know, only the damages portion of this New West case is on appeal. Significantly, LAUSD elected not to pursue its appeal of the liability portion of the judgment.

- (b) Exemplar Violations - Set 2: LAUSD Failed to Comply with Prop. 39 and the Settlement Agreement During the Facilities Request and Offer Process for the 2009-10 School Year.

Despite adverse rulings in the *New West* case, LAUSD still failed to make legally compliant facilities offers to charter schools during the charter school facilities request and offer process for the 2009-10 school year. Indeed, as noted below, LAUSD violated affirmative steps required by Prop. 39 and its Implementing Regulations.

- i. December 1, 2008: LAUSD's Unsubstantiated and Unlawful Rejection of Projected ADA.*

On December 1, 2008, LAUSD sent letters to several charter schools advising them that the District did not agree with the schools' respective ADA projections. The District advised the schools that the District believed that the schools would have less than the required 80 in-district ADA for the 2009-10 school year. (See, e.g., Exhibit F, December 1, 2008 Letters from Gregory L. McNair to Emily Weinstein of Animo West Charter Middle School; December 1, 2008 Letter from Gregory L. McNair to Emily Weinstein of Animo SELF Charter Middle School; December 1, 2008 Letter from Gregory L. McNair to Edward Morris of Futuro College Preparatory Elementary School.)

In objecting to charter schools' ADA projections, however, LAUSD failed to comply with the Implementing Regulations. For example, LAUSD ignored charter schools' documentation of historical enrollment, retention, and growth trends, prior ADA figures, and/or historical and current wait list information. In many cases, LAUSD only acknowledged one-to-one verification of specific names of meaningfully interested students to justify ADA projections. This practice violated the Implementing Regulations'

express provision that the projections "need not be verifiable for precise arithmetical accuracy." (See CCR, tit. 5, § 11969.9(c)(1)(C).) In addition, LAUSD engaged in the outright rejection of many charter schools' ADA projections without informing the schools of their right to respond to the District's determination by January 2. In doing so, the District cut off the iterative process for those schools, completely ignoring this section of the revised Implementing Regulations. (See, e.g., Exhibit G, January 29, 2009 Letter from Gary Borden, CCSA, to Jose Cole-Gutierrez).

*ii. January 30, 2009: LAUSD's Failure to Provide Preliminary Offers.*

On January 30, 2009, LAUSD sent letters to various CCSA member schools refusing to provide preliminary offers and claiming that those schools were ineligible to receive facilities offers based on ADA projections. (See Exhibit H, January 30, 2009 Letters from LAUSD to Animo SELF Charter Middle School, Valor Academy Charter School, Animo Westside Charter Middle School, Equitas Academy Charter School, and Futuro College Preparatory Elementary School.)

Each of those schools, however, provided timely responses documenting specific objections to LAUSD's December 1, 2008, letters claiming reductions in the schools' ADA projections. (See Exhibit I, Letters from Animo SELF Charter Middle School, Valor Academy Charter School, Animo Westside Charter Middle School, Equitas Academy Charter School, and Futuro College Preparatory Elementary School to LAUSD.) Despite this, LAUSD arbitrarily denied those schools facilities in violation of Prop. 39.

In addition, on January 30, 2009, LAUSD sent letters to over a dozen other CCSA member schools refusing to provide preliminary offers based on a claim that it "has not yet been able to identify space." (See Exhibit J, January 30, 2009 Letters from LAUSD to various charter schools regarding preliminary offers.)

The law does not offer the District the form of discretion it takes in relation to Prop. 39. The law does not allow a flat-out rejection of projected ADA where the projection meets the legal standards. Instead, the law provides: "that public school facilities should be shared fairly among all public school pupils, including those in charter schools" (Ed. Code, § 47614 subd.(a) [emphasis added]) and that "[e]ach school district *shall make available*, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions *reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district.*" (*Id.* at subd. (b) [emphasis added].)

*iii. February 1 and April 1, 2009: LAUSD's Failure to Provide Compliant Preliminary and Final Offers.*

Of the offers that LAUSD actually made for the 2009-10 school year operations, we also note a wide range of deficiencies in both preliminary and final facilities offers.

Preliminary offers: failed to identify comparison schools properly; used incorrect ADA projections for the charter schools; failed to allocate sufficient teaching stations, specialized classroom space, and non-teaching space to the charter schools; offered facilities not reasonably equivalent to the condition of comparison schools; and contained illegal contingencies, including the contingency that the charter schools waive their rights to challenge LAUSD's compliance with Prop. 39 as a condition to accepting the facilities offer. (See, e.g., Exhibit K, February 27, 2009 Letter from Middleton, Young & Minney, LLP to LAUSD responding to LAUSD's preliminary offer to New West Charter School.) In some instances, these preliminary offers *even admitted* that LAUSD did not fully accommodate the charter schools' projected in-district ADA. (See, e.g., Exhibit L, January 31, 2009 Preliminary Offer from LAUSD to Ivy Academia Charter School, at p. 2.)

Final facilities offers contained similar flaws, including the failure to respond to concerns addressed by charter schools, the failure to allocate reasonably equivalent facilities to charter schools, the failure to make a reasonable effort to locate the charter schools near their requested locations, and the imposition of a facilities use agreement containing impermissible provisions on the charter schools as a condition of acceptance. (See, e.g., Exhibit M, April 30, 2009 Letter from Middleton, Young & Minney, LLP to LAUSD responding to LAUSD's final offer to CHAMPS Charter High School.)

Such deficiencies forced New West Charter Middle School, one of the few charter schools located in LAUSD's jurisdiction which is not subject to LAUSD's onerous alternative dispute resolution provision in its charter petition<sup>2</sup>, to file another lawsuit against LAUSD alleging violations of Prop. 39. (See *New West Charter Middle School v. LAUSD*, Los Angeles Superior Court Case No. BS122116, filed August 11, 2009.)

*iv. April 2009 – August 2009: LAUSD's Rolling Offers and Imposition of Additional Restrictions and Burdens.*

After the April 1, 2009, deadline for final offers had come and gone, LAUSD, with the purported purpose of finding facilities solutions for some of those schools, continued to engage with certain Prop. 39 applicants. In the course of those actions, LAUSD took advantage of schools needing sites by exacting concessions from charter schools in the form of: changes to charter school schedules to conform to district schedules; requiring charter schools to use district services for meals; changing space allocations; and a host of other overreaching actions. LAUSD simply takes advantage of the fact that charter schools are often desperate to find space to educate the public school students in their care and are often in virtually powerless bargaining positions. LAUSD uses that imbalance of power to force charter schools to consent to district demands.

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<sup>2</sup> It should be noted that along with New West, Green Dot, and PUC, Ivy Academia is one of the few schools to go forward with disputing LAUSD's compliance with Prop.39. Being subjected to LAUSD's mandatory dispute resolution process has undercut charter school rights. For example, Ivy Academia still has no resolution of the disputes surrounding LAUSD's Prop.39 failures for the 2007-08 and 2008-09 school years.

In the end, although 60 charter schools requested facilities from LAUSD for the 2009-10 school year, LAUSD provided final offers to only 36 of these schools. Of those 36 offers, few, if any, complied with Prop. 39 – an indication that LAUSD either does not understand its obligations under the Settlement Agreement or has no intention of investing itself in complying.

(c) Exemplar Violations – Set 3: LAUSD Continues to Violate Prop. 39 and Section 3 of the Settlement Agreement During the Facilities Request and Offer Process for the 2010-11 School Year.

In responding to facilities requests for the 2009-10 school year, CCSA and many of its member schools provided LAUSD with ample notice concerning LAUSD's failure to comply with Prop. 39 and the terms of the Settlement Agreement. Despite repeated requests for compliance with the law and the Settlement Agreement, LAUSD's actions are even more egregious in relation to this year's application process for 2010-11 school year facilities.

*i. February 2010: LAUSD's Rolling and Deficient Preliminary Offers.*

As CCSA explained in its February 8, 2010, letter to LAUSD, 81 charter schools in LAUSD anxiously awaited preliminary offers from LAUSD by February 1, 2010. Most, however, were sorely disappointed. Despite the strict time deadlines set forth in the Implementing Regulations, LAUSD failed to make at a minimum 65 preliminary offers to charter schools in LAUSD that had submitted complete facilities requests. (See Exhibit N, February 8, 2010 Letter from Jed Wallace, CCSA, to Ramon C. Cortines.) Instead of offers, those 65 charter schools received short, cursory letters indicating that LAUSD had not yet identified space for them. These letters failed to demonstrate any meaningful effort toward finding space for those charter schools. No concrete action plan was identified indicating that LAUSD would make any effort to accommodate those charter schools and their students. Instead, LAUSD simply gave itself a unilateral extension of time within which to respond under Prop. 39 by indicating that the "District will continue to evaluate potentially available space and will make final offers on April 1, 2010."

Moreover, only ten charter schools received timely preliminary offer letters. In at least a few of those cases, the preliminary offers appear legally actionable on their face. For example, LAUSD offered a school with a projected ADA of 1,100 public school students the use of only eight classrooms and one office, resulting in over 137 students per classroom. In another case, LAUSD offered a school with a projected ADA of 564 public school students the use of seven classrooms and one office, resulting in 80+ students per classroom.

After the regulatory deadline, LAUSD has continued to make equally non-compliant rolling preliminary offers.<sup>3</sup>

*ii. February 2010: LAUSD's Facilities Inventory and the Public School Choice Resolution Request for Proposal Process.*

LAUSD's recent Public School Choice ("PSC") Resolution process demonstrates that LAUSD has both the capacity for speedy action and extensive facilities that it can use to comply with its legal duties under Prop. 39 and the Settlement Agreement – if LAUSD would only choose to comply with the law instead of discriminating against public school students attending charter schools.

From its inception in July 2009 to its implementation in February 2010, LAUSD mobilized to effect work on the PSC Resolution. While CCSA and its members were not satisfied with the outcomes, the process revealed that if LAUSD desires to focus on a project, it can mobilize and engage with the community and get the project largely underway. Even though the ultimate decisions under the PSC Resolution were not to CCSA's satisfaction, CCSA was grateful for the opportunity to participate in task forces and committees aimed at structuring and defining the PSC processes. However, this begs the question of why the District has not similarly moved on its obligations under Prop. 39 and the Settlement Agreement.

Moreover, the PSC process also illustrates that there are facilities within LAUSD's holdings that can simultaneously satisfy its legal obligations on a variety of fronts. If it so desired, LAUSD could use the facilities subject to the PSC process to fulfill obligations under Prop. 39, the Settlement Agreement, and No Child Left Behind, and it could eliminate multi-tracking in impacted campuses.

However, LAUSD has not engaged in the PSC Resolution and process in such a manner as to create an opportunity to meet its various obligations concurrently. With 24 new campuses, LAUSD could have made a major effort toward simultaneously meeting

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<sup>3</sup> On February 19 and 26, 2010, LAUSD made nine additional preliminary offers to charter schools. Many of these preliminary offers also appear legally actionable on their face. For example, LAUSD offered a school with a projected ADA of 350 public school students the use of 3 classrooms and 1 office, resulting in over 116 students per classroom. In another case, LAUSD offered a school with a projected ADA of 270 public school students the use of 3 classrooms and 1 office, resulting in 90 students per classroom.

In the last two weeks, the District has brought its total to 30 preliminary offers by making an additional eight offers on March 5, 2010 and another three offers on March 12, 2010. Again, LAUSD is not complying with the law in making these gestures. For example, in 17 of these 30 preliminary offers, LAUSD noted that it did not have "occupancy-ready contiguous space" to accommodate all the ADA. Another example is found in a letter dated March 5, where LAUSD offered 3 classrooms for 544 public school students (181 ADA/classroom).

these unmet legal obligations. Instead, LAUSD awarded the overwhelming majority of these campuses to non-charter schools *at the same time* that it sent letters to charter schools saying that it could not identify space and meet its Prop. 39 obligations. (See Exhibit Q, "So-called school reform," L.A. Times editorial, March 2, 2010.) Accordingly, nearly none of the new space available will be used to make up the long-standing deficit in LAUSD's refusal to comply with Prop. 39.

*iii. March 2010: LAUSD's Elimination of Portables and Classroom Space.*

Most recently CCSA has learned that LAUSD is in the process of removing large numbers of portable classrooms from its school campuses. These actions deplete LAUSD's facilities inventory when many of its charter school students have no facilities at all. These actions show a continuing practice of violating the law and LAUSD's obligation in the Settlement Agreement that it "shall make a facilities offer to that charter school that complies with Prop. 39 and any Prop. 39 implementing regulations in effect at that time."

(d) CCSA's Demand for Compliance with Prop. 39 and Section 3.

CCSA hereby demands that LAUSD comply with Prop. 39 and the Implementing Regulations, as confirmed by Section 3 in the Settlement Agreement, by making final facilities offers to charter schools for the 2010-11 school year which comply with the law. Failure to do so will force CCSA to use the power afforded it under the law and under the Settlement Agreement to seek judicial enforcement of these repeatedly-violated legal duties, including seeking appropriate judicial oversight of LAUSD's facilities offer process by asking the court to appoint a special master to oversee and remedy the legal violations that LAUSD is unwilling to correct itself.

**2. LAUSD Has Violated Section 4 of the Settlement Agreement By Incorporating Terms into the Form Facilities Use Agreement that Fail to Comply with Prop. 39.**

Section 4 of the Settlement Agreement required LAUSD to "negotiate in good faith" with CCSA and use its best efforts to agree to a form FUA that LAUSD would then offer for use by any CCSA member school, specifying that the form FUA must "comply with Proposition 39 and the implementing regulations." While CCSA and LAUSD engaged in negotiations over a template FUA, LAUSD ultimately adopted a form FUA with appendices that violates Prop. 39.

For example, the Implementing Regulations provide that ongoing maintenance and operations ("M&O") of facilities *are the responsibility of the charter school* with the District providing only deferred maintenance on the facilities. (5 CCR § 11969.4(b).) Moreover, Section 11969.7(a) expressly states that "facilities costs do not include any costs that are paid by the charter school, including, but not limited to, costs associated with ongoing operations and maintenance . . ." (5 CCR § 11969.7(a).) Thus, Prop. 39

and the Implementing Regulations expressly provide that the pro rata share must *not* include costs for routine repair and maintenance of the facility.

Despite the express language that provides charter schools with the statutory right to take care of M&O themselves, Section 11.6 of the form FUA mandates that LAUSD perform those operations and maintenance (at great expense to the charter school) stating specifically: "LAUSD shall solely be responsible for performing M&O on the Charter School Premises and the Charter School Shared Premises."

Moreover, LAUSD's calculation of those costs also fails to comply with Prop. 39. For the 2009-2010 school year, LAUSD charged an outrageous \$7.62 per square foot for what it labels "LAUSD Facilities Costs for Co-Locations." The costs outlined are described in a manner designed to make it particularly difficult for charter schools to separate out what is permitted and what is not, especially given that LAUSD fails to separate out the oversight, pro rata share, and maintenance and operations charges for the 2009-2010 school year. For the 2010-2011 seeks to charge an even more outrageous \$7.92 per square foot.

Despite the deliberately obtuse presentation of charges, it is nonetheless evident that many are unlawful. For example, Exhibit B to the FUA includes a line item for "Insurance." Insurance is not contemplated under the Implementing Regulations as an acceptable "facilities cost." Moreover, the calculation of these charges, most of which depend upon the LAUSD's total building square footage, is questionable at best given LAUSD's lack of any comprehensive facilities inventory as set forth below.

Pursuant to Section 4, LAUSD was obligated to negotiate a form FUA that fully complied with Prop. 39. It has failed to do that. We hereby demand that LAUSD modify the FUA to meet the legal standards in sufficient time to place such a revised FUA in effect during the next school year. Failure to do so will force CCSA to use the power afforded it under the law and under the Settlement Agreement to seek judicial enforcement of this long-violated legal duty, including seeking appropriate judicial oversight of LAUSD facilities offer process to ensure that LAUSD stops forcing public charter schools to pay exorbitant and illegal sums for the facilities LAUSD rarely even is willing to offer.

**3. LAUSD Has Violated Section 5 of the Settlement Agreement By Failing to Rescind Its Unlawful Prop. 39 Policies and Replace Them with Legal Policies.**

Section 5 of the Settlement Agreement required LAUSD, *within 60 days* of the effective date of the Amended Implementing Regulations (*i.e.*, by May 30, 2008), to:

[R]escind its Proposition 39 policies (including the March 2004 LAUSD Report No. 257-03-04 titled "Policies and Procedures Regarding Allocation of Facilities to Charter Schools Under Education Code Section 47614," pertaining to

facilities allocations to charter schools) and . . . replace them with a policy that is compliant with the Amended Implementing Regulations."

LAUSD failed to comply with this clear mandatory duty. Even now, nearly two years past the deadline to which LAUSD committed, LAUSD has still failed to rescind its illegal LAUSD Prop. 39 Policies and adopt new, lawful policies.

Part of the reason that CCSA, Green Dot and PUC were forced to sue LAUSD in 2007 in the first place was because of LAUSD's unlawful Prop. 39 policies. Those policies unlawfully include many facilities allocation criteria beyond Prop. 39 that LAUSD uses to deny facilities to public school students attending charter schools. For example, the illegal LAUSD policies purport to allow LAUSD to refuse to make facilities available to public school students attending charter schools if it creates "an unfair burden on District-operated programs and students." This provision incorrectly presumes that students attending LAUSD-run schools and programs in those LAUSD-run schools always outrank students attending charter schools. This is a clear violation of Prop. 39's decree that "public school facilities should be shared fairly among all public school pupils, *including those in charter schools.*" (Ed. Code, § 47614 subd.(a) [emphasis added].)

A district's actions "in responding to a Prop. 39 facilities request must comport with the evident purpose of the Act to equalize the treatment of charter and district-run schools with respect to the allocation of space between them." (*Ridgecrest Charter School v. Sierra Sands Unified School Dist.* (2005) 130 Cal.App.4th 986, 1002.) "[T]o the maximum extent practicable, the needs of the charter school must be given the same consideration as those of the district-run schools, subject to the requirement that the facilities provided to the charter school must be "contiguous."" (*Id.*) In this sense, the District must give "equal consideration to the 'district' and charter school students." (*Id.*)

Although CCSA was not required to do so, in an effort to help LAUSD meet the May 30, 2008 deadline, CCSA put considerable effort into working with LAUSD to revise the LAUSD Prop. 39 Policies so that they could come closer to complying with Prop. 39. LAUSD and CCSA eventually agreed to the language for a revised Prop. 39 policy around June 23, 2008, which was already past the May 30, 2008 deadline.

LAUSD staff failed to present the revised policy to its Board at the subsequent meeting. In fact, the revised Prop. 39 policy was not and never has been presented to the Board. ***Instead, LAUSD's illegal policy that it promised to rescind almost two years ago remains in place to this day.***

While it failed entirely to fulfill its legal and contractual obligation to rescind its illegal Prop. 39 policy, in stark contrast LAUSD managed to adopt a new authorizing policy that increases its oversight and control of charter schools, i.e., the LAUSD Policy for Charter School Authorizing (adopted by Board of Education on January 12, 2010). In taking on this additional program, LAUSD has demonstrated that it is more than capable of adopting new policies that it is motivated to adopt.

CCSA demands that LAUSD finally comply with Section 5 of the Settlement Agreement by rescinding the illegal LAUSD policies and adopting the revised policy previously agreed upon by LAUSD's staff, which is attached hereto to as Exhibit P. One outstanding item related to this policy is the issue of the formula to be agreed upon between LAUSD and CCSA for sharing set aside rooms. (See Settlement Agreement, section 5(b)(v).) The current draft of the policy recognizes the obligation to negotiate the formula but it does not set forth the formula. CCSA is prepared to negotiate this matter to completion and requests the opportunity to engage with LAUSD on the matter with the objective of finalizing the policy in short order.

LAUSD's failure to finalize and pass the revised Prop. 39 policy will place CCSA in the position of having to seek judicial enforcement of these long-violated legal duties, including seeking appropriate judicial oversight of LAUSD facilities offer process to ensure future compliance with the law and to prevent LAUSD's continued adherence to its illegal policies. CCSA would like to avoid this if possible. However, significant movement on LAUSD's part is required in order to prevent this result.

**4. LAUSD Has Violated Section 6 of the Settlement Agreement By Failing to Make Good Faith Efforts To Secure Funding And Complete The Comprehensive Inventory of LAUSD Facilities.**

In the process of reviewing the District's performance under Prop. 39, it has become evident that LAUSD operates its real estate assets in a surprisingly erratic and subjective fashion.

During negotiations of the Settlement Agreement and in LAUSD's responses to Public Records Act requests seeking information about LAUSD's real estate assets, LAUSD has admitted that it does not have an inventory of its own real estate assets.

This lack of basic information is puzzling. How can LAUSD comply with Prop. 39 or, even more basically, use its taxpayer-funded real estate in a responsible fashion, if it does not even know what real estate it has? How can LAUSD continue to ask the residents in the LAUSD jurisdiction for more funding for buildings when the District cannot accurately articulate the real estate assets it has? More significantly, how can LAUSD ask voters for more funding for buildings when its enrollment has been declining?

As a matter of fiduciary responsibility, it would seem that LAUSD was (and is) required to create an inventory of its own real estate assets so that LAUSD can use appropriate information when it makes decisions to allocate those assets. Nevertheless, LAUSD refused to do so unless special funding was found to create such an inventory. Accordingly, Section 6 of the Settlement Agreement required LAUSD and CCSA to work in good faith and use their mutual best efforts to secure funding to create a comprehensive inventory of LAUSD facilities. To the extent funding was available, LAUSD had to perform such a comprehensive facilities inventory.

As with the rest of its obligations under the Settlement Agreement, LAUSD also has failed to meet its obligations here. Shortly after the Settlement Agreement was executed, LAUSD insisted that it would cost \$2 million to create an inventory. That sum was (and is) inexplicably high and LAUSD never provided any support whatsoever for that unreasonable and arbitrary number.

Despite that unsupported sum, CCSA tried to help find third-party funding for an inventory. However, this proved difficult for CCSA given the factual circumstances. First, it was clear that such an inventory was a basic, pre-existing obligation already incumbent on any public entity with widespread real estate assets. Moreover, it was clear that such an inventory would primarily benefit LAUSD itself. Finally, it appeared that the creation of such an inventory could be funded out of LAUSD's massive real estate and construction budget with relatively little additional effort on LAUSD's part.

For its part, LAUSD has presented no evidence that it made any effort whatsoever to raise any money for the facilities inventory. The only effort LAUSD made was to "offer" that it would be willing to take money out of a small fraction of bond funds that were allocated to charter schools and use that money to create the District's facilities inventory. In other words, LAUSD was willing to take more from charter schools in order to fund the accounting of its own assets.

These facts lead one to conclude that LAUSD made up an unreasonably high cost estimate for the inventory to create a barrier that would be difficult to overcome. Moreover, this fact pattern also leaves one with the impression that LAUSD prefers to avoid taking an inventory of its own facilities. Not having an inventory allows LAUSD to claim it does not have space for public school students attending charter schools.

Not having an inventory has added self-interest and subjectivity to the process of determining available facilities. As it stands, LAUSD relies upon district principals to assess and self-report whether their school sites have space to share with charter school students. There is no desire or incentive for any of these district principals to share the facilities with schools they often view as competitors of their own programs.

Whatever the case, it is clear that LAUSD violated its mandatory duty in Section 6 of the Settlement Agreement by making no efforts to find funding for a facilities inventory and by arbitrarily setting a high sum for such an inventory that made it impossible for CCSA to find funding.

CCSA hereby demands that LAUSD comply with Section 6 by examining its own staff and financial resources to determine how it can create an inventory of its real estate holdings, and by moving forward with an inventory of its facilities. In taking these actions, LAUSD can begin to manage its assets as the taxpayers have a right to expect and for the benefit of the students who need responsible allocations of those assets. Failure to do so will force CCSA to use the power afforded it under the law and under the Settlement Agreement to seek judicial enforcement of this long-violated legal duty.

**5. LAUSD Has Violated Section 7 of the Settlement Agreement By Failing to Produce The Required Five-Year Facilities Plan That Meets The Projected Needs Of Charter Schools.**

Section 7 of the Settlement Agreement required LAUSD to begin a facilities planning process with CCSA to produce a five-year facilities plan that meets the projected needs of charter schools. The LAUSD Board was required to adopt that plan by December 31, 2008 – *over a year ago*. As with its other mandatory duties, LAUSD failed to meet this obligation.

CCSA expended extensive resources to facilitate preparation of the five-year facilities plan. CCSA went to great effort to project the needs of charter schools. CCSA employees spent weeks on the phone with charter school operators gathering information to provide to LAUSD for the joint facilities planning process. As a result of these efforts, by August 2008 – well in advance of the December 31, 2008 deadline – CCSA provided LAUSD with a spreadsheet noting the information that LAUSD needed to produce the required five-year facilities plan. Further, CCSA proactively scheduled meetings with LAUSD, preparing detailed agendas for those meetings and presented a timeline designed to meet the December 31, 2008, deadline.

In return, LAUSD subjected CCSA to a wasteful process that was never going to produce the five-year facilities plan required by the Settlement Agreement. That process consisted of a series of meetings with a constantly changing group of LAUSD representatives. LAUSD unilaterally invited an ever-expanding group of both LAUSD and non-LAUSD individuals to those meetings, which undermined any genuine progress towards preparation of the required five-year facilities plan.

The conduct here demonstrates that LAUSD allowed bureaucratic gamesmanship to obstruct progress toward meeting this mandatory duty. Rather than create an efficient and manageably sized group of LAUSD staff with sufficient seniority and expertise to make a real five-year plan to meet the needs of public school students attending charter schools – LAUSD engaged in an unwieldy and unproductive process that amounted in no tangible benefit.

LAUSD's conduct violated Section 7 of the Settlement Agreement. CCSA demands that LAUSD immediately appoint a group of not more than three LAUSD employees, including the Executive Director of the Innovation and Charter Schools Division, to meet with CCSA starting now and with the firm deadline to create a five-year plan as required under Section 7 by May 1, 2010. Failure to do so will force CCSA to use the power afforded it under the law and under the Settlement Agreement to seek judicial enforcement of this long-violated legal duty, including seeking appropriate judicial oversight of LAUSD facilities allocation process.

## 6. Conclusion.

Since the operative date of Prop. 39, LAUSD has refused to follow Prop. 39's mandate that it allocate its facilities fairly, including to students attending charter schools. LAUSD's pattern and practice of violating the rights of charter school students forced CCSA to sue LAUSD once before.

In 2008, after the expense of engaging in litigation, LAUSD finally consented to the terms of the Settlement Agreement, committing that it would finally start complying with Prop. 39. To be clear about how LAUSD would meet those legal duties, the Settlement Agreement spelled out various steps that LAUSD legally committed itself to do. LAUSD legally committed itself to rescind its illegal policies, to adopt new policies that comply with the law, to create a form FUA that complies with the law, to make real efforts to try to create an inventory of its own facilities, and to create a joint five-year plan for charter school facilities. But in each and every respect, LAUSD violated its commitments.

With this record of broken promises, it is hard to reach any conclusion but that LAUSD simply entered into the Settlement Agreement in order to avoid judicial review. This conclusion is borne out by the District's own correspondence.<sup>4</sup>

LAUSD's statements regarding the Facilities Building Program misrepresent both the Settlement Agreement and the law.<sup>5</sup> A private settlement agreement cannot reduce

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<sup>4</sup> In an item of Inter-Office Correspondence sent to the Board of Education on December 14, 2009, and a letter the Superintendent sent to the LAUSD staff and community on December 17, 2009, Superintendent Cortines stated that, "[i]n order to avoid court ordered procedures that might be dramatically unfavorable with the District's facilities plans, the Board of Education directed that the case be settled." (See Exhibit Q, December 14, 2009, Inter-Office Correspondence from Ramon C. Cortines to LAUSD Board of Education; December 17, 2009, Letter from Ramon C. Cortines to LAUSD Staff and Community.) This statement indicates that LAUSD had concerns about having a court review its practices and so settled and made, as yet unfulfilled, promises that it would comply with Prop. 39. In addition, the December 14, 2009 Inter-Office Correspondence also demonstrates that LAUSD erroneously believes it garnered some form of latitude in respect to compliance with Prop. 39. The correspondence states that the Settlement Agreement "arguably grants more rights to the District than it would be entitled to under a strict reading of the law in that the agreement allows the District to maintain the core principles of the Facilities Building Program." (See Exhibit Q, December 14, 2009 Inter-Office Correspondence, at p. 2.)

<sup>5</sup> It appears that LAUSD had been misrepresenting both the Settlement Agreement and the law before the final Settlement Agreement had even been executed. On March 13, 2008, then Superintendent Brewer sent an Inter-Office Correspondence to the Board of Education which also stated that the Settlement Agreement "arguably grants more rights to the District than it would be entitled to under a strict reading of the law in that the agreement allows the District to maintain the core principles of the Facilities Building Program." (See Exhibit R, March 13, 2008, Inter-Office Correspondence from David L. Brewer III to LAUSD Board of Education, at p. 2.)

the District's legal obligations. (See, e.g., *League of Residential Neighborhood Advocates v. City of Los Angeles* (9th Cir. 2007) 498 F.3d 1052, 1053 ["A settlement agreement cannot override state law absent a specific determination that federal law has been or will be violated."]; *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172, 187 [holding that "established regulatory regimes . . . may not be deviated from solely on bilateral agreement"].) The Settlement Agreement does not grant LAUSD "more rights"; instead, it confirms that LAUSD must comply with Prop. 39 and sets forth various additional obligations to ensure such compliance.

While CCSA will not tolerate this behavior any longer, it remains interested in working with LAUSD to assist the District in fully complying with the law and its commitments in the Settlement Agreement. However, that resolution will have to be swift and satisfactory to CCSA and its members given LAUSD's track record.

CCSA's members are deeply dedicated to educating public school students. CCSA and its membership have no desire to engage in any form of protracted litigation with LAUSD. Indeed, CCSA has extended many opportunities for collaboration with and support to LAUSD. The charter school community sincerely wishes to work toward providing effective options for LAUSD students and families. However, LAUSD actions such as those noted-above are irreconcilable with LAUSD's public expressions of support for charter schools and their students and families. Moreover, such actions pose significant barriers to the growth of school choice through charter schools.

A review of history demonstrates that in response to this letter, LAUSD will most likely engage in tactics aimed at playing to the media. It will provide a laundry list of schools it has visited, forms that have been filled out, meetings that have been held, and "efforts" that have been made. All of this will be paraded about in an effort to make a public showing that LAUSD is doing the best it can. The fact is that LAUSD's efforts are not good enough under the legal lens of Prop. 39.

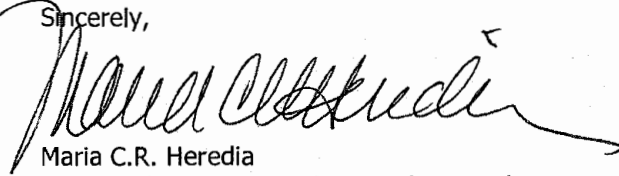
Whether or not LAUSD finds it palatable, suitable, or convenient is irrelevant to the analysis. The voters made clear their expectations when Prop. 39 passed. LAUSD should not see itself as the landlord of school sites. Rather, LAUSD is holding those sites as an administrator, in trust for all public school students living within LAUSD's boundaries. Whether those students are in traditional district schools or charter schools is irrelevant to the voters.

David Holmquist  
March 19, 2010  
Page 19 of 19

We sincerely hope that LAUSD will change its course and meet our requests. It would be a waste of precious resources – LAUSD's and CCSA's – to have to seek judicial intervention when both parties should be working together effectively and efficiently. Accordingly, in the genuine interest of trying to avoid litigation over this, we ask for a meeting of the principals at your earliest opportunity to discuss these issues and the objectives noted herein.

Thank you for your time, thought and action on this matter.

Sincerely,



Maria C.R. Heredia  
SVP Legal Advocacy and General Counsel  
California Charter Schools Association

cc: Ramon Cortines, Superintendent (w/Exhibits);  
Parker Hudnut, Executive Director of the Innovation and Charter Division  
(w/Exhibits);  
Jed Wallace, CCSA Chief Executive Officer (w/o Exhibits);  
Allison Bajracharya, CCSA Managing Regional Director of Policy and Advocacy (w/o  
Exhibits);  
Paul Escala, CCSA Senior Advisor, Charter School Facilities (w/o Exhibits)

## LIST OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
Exhibit A	April 22, 2008 Inter-Office Correspondence from Ray Cortines to Board and David L. Brewer III regarding Taft High School; April 22, 2008 Inter-Office Correspondence from Ray Cortines to Board and David L. Brewer III regarding Fairfax High School
Exhibit B	April 30, 2008 Inter-Office Correspondence from Ray Cortines to Board and David L. Brewer III
Exhibit C	April 30, 2008 Letter from Ray Cortines to CALS Middle School; April 30, 2008 Letter from Ray Cortines to New West Charter School
Exhibit D	September 5, 2008 Tentative Decision on Petition for Writ of Mandate, <i>New West Charter Middle School v. LAUSD</i> ; October 3, 2008 Judgment Granting Peremptory Writ of Mandate and Order, <i>New West Charter Middle School v. LAUSD</i>
Exhibit E	November 21, 2008 Tentative Decision on Motion to Enforce Writ, <i>New West Charter Middle School v. LAUSD</i>
Exhibit F	December 1, 2008 Letter from Gregory L. McNair to Emily Weinstein, Animo West Charter Middle School; December 1, 2008 Letter from Gregory L. McNair to Emily Weinstein, Animo SELF Charter Middle School; December 1, 2008 Letter from Gregory L. McNair to Edward Morris, Futuro College Preparatory Elementary School
Exhibit G	January 29, 2009 Letter from Gary Borden, CCSA, to Jose Cole-Gutierrez
Exhibit H	January 30, 2009 Letters from LAUSD to Animo SELF Charter Middle School, Valor Academy Charter School, Animo Westside Charter Middle School, Equitas Academy Charter School, and Futuro College Preparatory Elementary School

(i)

<u>Exhibit</u>	<u>Description</u>
Exhibit I	Letters to LAUSD from Animo SELF Charter Middle School, Valor Academy Charter School, Animo Westside Charter Middle School, Equitas Academy Charter School, and Futuro College Preparatory Elementary School
Exhibit J	January 30, 2009 Letters from LAUSD to various charter schools regarding preliminary offers
Exhibit K	February 27, 2009 Letter from Middleton, Young & Minney, LLP to LAUSD responding to LAUSD's preliminary offer to New West Charter School
Exhibit L	January 31, 2009 Preliminary Offer from LAUSD to Ivy Academia Charter School
Exhibit M	April 30, 2009 Letter from Middleton, Young & Minney, LLP to LAUSD responding to LAUSD's final offer to CHAMPS Charter High School
Exhibit N	February 8, 2010 Letter from Jed Wallace, CCSA, to Ramon C. Cortines
Exhibit O	"So-called school reform," L.A. Times editorial, March 2, 2010
Exhibit P	Los Angeles Unified School District Policies and Procedures Regarding Allocation of Facilities to Charter Schools Under Education Code Section 47614, Revised, June 2008
Exhibit Q	December 14, 2009, Inter-Office Correspondence from Ramon C. Cortines to LAUSD Board of Education; December 17, 2009, Letter from Ramon C. Cortines to LAUSD Staff and Community
Exhibit R	March 13, 2008, Inter-Office Correspondence from David L. Brewer III to LAUSD Board of Education

(ii)


# EXHIBIT A

**LOS ANGELES UNIFIED SCHOOL DISTRICT**  
*Office of the Senior Deputy Superintendent*

**Inter-Office Correspondence**

**To:** Members, Board of Education  
David L. Brewer III, Superintendent

**Date:** April 22, 2008

**From:**  Ray Cortines

**Subject:** TAFT HIGH SCHOOL PROP 39 CO-LOCATION

Beginning today, I will be actively involved in the decision-making process concerning Proposition 39 offers. I understand that there are many important factors to consider when making decisions about placing charter schools on an LAUSD school site. The District has a legal obligation under Proposition 39 to provide facilities to charter schools that apply for space and this legal obligation is buttressed by a settlement agreement in which LAUSD agreed to, among other things, satisfy its legal obligation. On the other hand, this year LAUSD received a record number of applications for space; 55 charter schools applied for over 17, 000 seats. My understanding is this is almost three times the approximately 6,000 seats charter schools applied for last year. Given this level of demand, there is understandable concern on the part of administrators, teachers, parents, and students at LAUSD school sites about the instructional impact of LAUSD's efforts to satisfy its legal obligations.

In an effort to address this concern, I have assigned two experienced LAUSD instructional leaders to the teams visiting the LAUSD schools in anticipation of charter school co-locations. The administrators will analyze the instructional impact of proposed charter school co-locations. Their analysis will be an important part of the decision-making process related to co-locations.

In addition, I am open to discussing alternatives to the co-location recommendations made by the Facilities Services Division that you or the relevant LAUSD school community believe would better serve students. We must all, keep in mind, however, that LAUSD has an obligation to make space available under the law and the settlement agreement. Foregoing the co-location, therefore, is not a viable alternative unless I find that the co-location is clearly detrimental to the education of charter or non-charter school students.

In this process we must all be guided by the recognition that all of the students both charter and non-charter, are students of LAUSD and our vision is that all students will be college prepared and career ready.

Below please find for your consideration a listing of the issues and recommendations for Taft High School.

School	Total # Classrooms	# Classrooms Needed for Charter	Issues	Facilities Recommendations
Taft HS	121	15	<ol style="list-style-type: none"> <li>1. Parents and UTLA are opposing a charter co-location</li> <li>2. Currently there are 7 classrooms available on the campus for charter use.</li> <li>3. Taft will receive approximately 500 students into the 9<sup>th</sup> grade through open enrollment and PWT.</li> <li>4. The only way to produce 15 classrooms is to cap the number of 9<sup>th</sup> grade open enrollment and PWT</li> <li>5. Taft has several classrooms that are used for part of the day.</li> </ol>	<ol style="list-style-type: none"> <li>1. Remove 15 classrooms from Taft's inventory</li> <li>2. Re-do the master schedule for Taft with 106 classrooms and eliminate partial use of classrooms</li> <li>3. Have Superintendent Brown and Principal Thomas represent at the community meeting tonight that the District and the school will work with the charter to make this successful.</li> </ol>

c: Jean Brown  
Sharon Thomas  
Angela Hewlett Bloch  
Jeffrey Davis  
Caprice Young  
John Creer  
Ana Fernandez

**LOS ANGELES UNIFIED SCHOOL DISTRICT**  
*Office of the Senior Deputy Superintendent*

**Inter-Office Correspondence**

**To:** Members, Board of Education  
David L. Brewer III, Superintendent

**Date:** April 22, 2008

**From:**  Ray Cortines

**Subject: FAIRFAX HIGH SCHOOL PROP 39 CO-LOCATION**

Beginning today, I will be actively involved in the decision-making process concerning Proposition 39 offers. I understand that there are many important factors to consider when making decisions about placing charter schools on an LAUSD school site. The District has a legal obligation under Proposition 39 to provide facilities to charter schools that apply for space and this legal obligation is buttressed by a settlement agreement in which LAUSD agreed to, among other things, satisfy its legal obligation. On the other hand, this year LAUSD received a record number of applications for space; 55 charter schools applied for over 17, 000 seats. My understanding is this is almost three times the approximately 6,000 seats charter schools applied for last year. Given this level of demand, there is understandable concern on the part of administrators, teachers, parents, and students at LAUSD school sites about the instructional impact of LAUSD's efforts to satisfy its legal obligations.

In and effort to address this concern, I have assigned two experienced LAUSD instructional leaders to the teams visiting the LAUSD schools in anticipation of charter school co-locations. The administrators will analyze the instructional impact of proposed charter school co-locations. Their analysis will be an important part of the decision-making process related to co-locations

In addition, I am open to discussing alternatives to the co-location recommendations made by the Facilities Services Division that you or the relevant LAUSD school community believe would better serve students. We must all, keep in mind, however, that LAUSD has an obligation to make space available under the law and the settlement agreement. Foregoing the co-location, therefore, is not a viable alternative unless I find that the co-location is clearly detrimental to the education of charter or non-charter school students.

In this process we must all be guided by the recognition that all of the students both charter and non-charter, are students of LAUSD and our vision is that all students will be college prepared and career ready.

Below please find for your consideration a listing of the issues and recommendations for Fairfax High School.

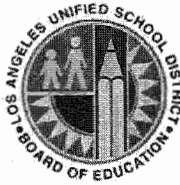
School	Total # Classrooms	# Classrooms Needed for Charter	Issues	Facilities Recommendations
Fairfax HS	125	13	<ol style="list-style-type: none"> <li>1. Community and UTLA are opposing charter co-location</li> <li>2. SLC offices are required for SLC conversion plan</li> <li>3. Many rooms are partially used throughout the day</li> </ol>	<ol style="list-style-type: none"> <li>1. Put on hold for a few days until District and Fairfax can work out a compromise for space utilization</li> <li>2. Re-master schedule to campus to eliminate partial use of classrooms</li> </ol>

c: Richard Alonzo  
Edward Zuriate  
Angela Hewlett Bloch  
Jeffrey Davis  
Caprice Young  
John Creer  
Ana Fernandez

# EXHIBIT B

**MEMBERS OF THE BOARD**

MONICA GARCIA, PRESIDENT  
MARLENE CANTER  
YOLIE FLORES AGUILAR  
TAMAR GALATZAN  
JULIE KORENSTEIN  
MARGUERITE POINDEXTER LAMOTTE  
RICHARD A. VLADOVIC



**LOS ANGELES UNIFIED SCHOOL DISTRICT**

Administrative Office  
333 South Beaudry Avenue, 11<sup>th</sup> Floor  
Los Angeles, California 90017  
Telephone: (213) 241-0800  
Fax: (213) 241-4546

**DAVID L. BREWER III**  
SUPERINTENDENT OF SCHOOLS

**RAMON C. CORTINES**  
SENIOR DEPUTY SUPERINTENDENT

Date: April 30, 2008

To: Members, Board of Education  
David L. Brewer III, Superintendent of Schools

From: Ray Cortines  
Senior Deputy Superintendent

Re: Prop 39 Update

---

Per my memo on April 22, I have convened an instructional group to work with Facilities to reevaluate the 2008-09 Prop 39 offers. Today we met and reviewed each District campus offered for a Prop 39 co-location and the potential instructional impacts.

As a result of our meeting, I have decided to withdraw the following seven offers based on the instructional impacts the charter co-location would impose:

Taft High School  
Fairfax High School  
Crenshaw High School  
Wadsworth Elementary School  
49<sup>th</sup> Street Elementary School  
Miles Elementary School  
Hughes Elementary School

I am sending a letter to each of the charters that received Prop 39 space on the above mentioned District campuses notifying them of my decision.

I have also directed the group to visit five schools to reevaluate the instructional impacts. On Friday, May 2, I will meet with the group to finalize my decisions on all of the remaining offers. I will inform you of my final decisions early next week.

I also intend to communicate in a letter to the California Charter Schools Association of my final decisions on all of the 2008-09 Prop 39 offers. I will offer my assistance to work with them to possibly find alternative space solutions. The 2008-09 Prop 39 implementation process makes great strides in addressing their facility needs under Prop 39. We will continue to work with them with an increased focus on the instructional integrity of programs for all students.

*"Every LAUSD student will receive a state-of-the-art education in a safe, caring environment, and every graduate will be college-prepared and career ready."*

My personal experience running a 3,000+ student secondary campus, even on 40 acres, has greatly informed my decision-making process. I am committed to supporting the instructional needs of all students but will caution against negatively impacting the efforts of any school program, District or charter.

c: Caprice Young

AJ Duffy

Michael Sullivan

Guy Mehula

Local District Superintendents

John Creer

Ana Teresa Fernandez

Angela Hewlett-Bloch

Janice Davis

Jeffrey Davis

Jose Cole-Gutierrez

Gregory McNair

# EXHIBIT C

## MEMBERS OF THE BOARD

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## LOS ANGELES UNIFIED SCHOOL DISTRICT

Administrative Office  
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DAVID L. BREWER III  
SUPERINTENDENT OF SCHOOLS

RAMON C. CORTINES  
SENIOR DEPUTY SUPERINTENDENT

April 30, 2008

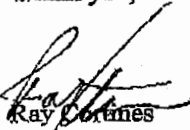
Via Facsimile at (323) 254-4099 and First Class Mail

Mr. Ref Rodriguez, Director  
CA. Academy for Liberal Arts Studies MS  
3838 Eagle Rock Blvd.  
Los Angeles, CA 90065

Dear Mr. Rodriguez,

As you know, on April 1, 2008, the Charter Schools Division of LAUSD extended an offer to CA Academy for Liberal Studies Middle School to co-locate on the campus of Miles Elementary School under Proposition 39. Over the past few weeks I have reassessed this offer and have concluded that the campus of Miles Elementary School cannot be shared fairly among the non-charter and charter school students because the co-location may have a detrimental impact on the education of all the students on this campus. I am therefore withdrawing the offer made to CA Academy of Liberal Arts Studies MS of eight classrooms at Miles Elementary School.

Thank you,

  
Ramon C. Cortines  
Sr. Deputy Superintendent

*"Every LAUSD student will receive a state-of-the-art education in a safe, caring environment and every graduate will be college-prepared and career ready."*

**MEMBERS OF THE BOARD**

**MONICA GARCIA, PRESIDENT**  
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**MARGUERITE POINDEXTER LAMOTTE**  
**RICHARD A. VLADOVIC**



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**DAVID L. BREWER III**  
**SUPERINTENDENT OF SCHOOLS**

**RAMON C. CORTINES**  
**SENIOR DEPUTY SUPERINTENDENT**

April 30, 2008


Via Facsimile at (310) 231-3399 and First Class Mail

Ms. Sharon Weir, Principal  
New West Charter  
11625 Pico Blvd  
Los Angeles, CA 90065

Dear Ms. Weir,

As you know, on April 1, 2008, the Charter Schools Division of LAUSD extended an offer to New West Charter school to co-locate on the campus of Fairfax High School under Proposition 39. Over the past few weeks I have reassessed this offer and have concluded that the campus of Fairfax High School cannot be shared fairly among the non-charter and charter school students because the co-location may have a detrimental impact on the education of all the students on this campus. I am therefore withdrawing the offer made to New West Charter of thirteen classrooms at Fairfax High School.

Thank you,

  
Ray Cortines  
Sr. Deputy Superintendent

*"Every LAUSD student will receive a state-of-the-art education in a safe, caring environment, and every graduate will be college-prepared and career ready."*

**\*\* Transmit Conf. Report \*\***

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RICHARD A. VLADOVIC



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Administrative Office  
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Los Angeles, California 90017  
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DAVID L. BREWER III  
SUPERINTENDENT OF SCHOOLS

RAMON C. CORTINES  
SENIOR DEPUTY SUPERINTENDENT

April 30, 2008

Via Facsimile at (310) 231-3399 and First Class Mail

Ms. Sharon Weir, Principal  
New West Charter  
11625 Pico Blvd  
Los Angeles, CA 90065

Dear Ms. Weir,

As you know, on April 1, 2008, the Charter Schools Division of LAUSD extended an offer to New West Charter school to co-locate on the campus of Fairfax High School under Proposition 39. Over the past few weeks I have reassessed this offer and have concluded that the campus of Fairfax High School cannot be shared fairly among the non-charter and charter school students because the co-location may have a detrimental impact on the education of all the students on this campus. I am therefore withdrawing the offer made to New West Charter of thirteen classrooms at Fairfax High School.

Thank you,

  
Ray Cortines  
Sr. Deputy Superintendent

*"Every LAUSD student will receive a state-of-the-art education in a safe, caring environment and every graduate will be college-prepared and career ready."*

# EXHIBIT D

New West Charter Middle School v.  
LAUSD  
 BS 115979

Tentative decision on petition for writ of  
 mandate: granted

Petitioner New West Charter Middle School ("New West") seeks a writ of traditional mandamus to compel Respondent Los Angeles Unified School District ("LAUSD" or the "District") to comply with its non-discretionary duties under Education Code section 47614 to provide reasonably equivalent school facilities. The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

**A. Statement of the Case**

New West commenced this proceeding on July 21, 2008, seeking to compel LAUSD to fulfill a mandatory obligation to provide its facilities to New West under Education Code §47614 and Proposition 39, enacted in November 2000.

**B. Applicable Law**

A party may seek to set aside an agency decision by petitioning for either a writ of administrative mandamus (CCP §1094.5) or of traditional mandamus. CCP §1085. A traditional writ of mandate under section 1085 is the method of compelling the performance of a legal, ministerial duty. Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-584. A petition for traditional mandamus is appropriate in all actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station...." CCP §1085. "Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy; the respondent has a duty to perform; and the petitioner has a clear and beneficial right to performance." Pomona Police Officers' Assn., 58 Cal.App.4th at 584 (internal citations omitted). No administrative record is required for traditional mandamus. The court must uphold the agency's action unless it is "arbitrary and capricious, lacking in evidentiary support, or made without due regard for the petitioner's rights." Sequoia Union High School District v. Aurora Charter High School, (2003) 112 Cal.App.4th 185, 195.

**C. Statement of Facts**

New West is a California public charter school approved by the State Board of Education ("SBE"), and operated as a California non-profit corporation in accordance with Education Code section 47604. New West is a highly successful public charter middle school located in West Los Angeles. Its current enrollment exceeds 300, all residing within the bounds of LAUSD, and could be legally increased to 600 students under its charter if it had space in which to educate them. New West had 689 applicants for less than 80 spaces available for fall 2008.

Charter schools generally, and New West specifically, have been highly successful. The Academic Performance Index ("API"), which is used by the State of California to evaluate a school's overall academic performance, reveals that charter schools operating in LAUSD are outperforming traditional public schools at the middle and high school levels. At the middle school level, LAUSD schools had an API of 634, far below the charter schools' median API of 729. New West's most recent API score of 835 is almost 200 points higher than LAUSD's median scores. Last year, New West was ranked in the top ten-percent of similar middle schools in the entire state, and was among the highest-performing middle schools in the LAUSD.

EXHIBIT

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Given this success, many parents have endeavored to place their children at New West and the other severely seat-limited charter schools. New West currently has a waiting list of about 400 students for next school year, out of about 689 applicants for Fall 2008. Students are not selected as the "cream of the crop," but rather are selected by a public random drawing (i.e., lottery) from among those seeking to attend.

On October 1, 2007, New West submitted a request to LAUSD pursuant to Ed. Code section 47614 for facilities to house approximately 300 middle school students for the 2008/2009 school year.

On April 1, 2008 LAUSD sent a letter to New West offering facilities at the District's Fairfax High School ("Fairfax") to co-locate the Charter School, which LAUSD stated was to meet its obligations under Proposition 39. On April 30, 2008, New West accepted the offer effective immediately, reserving its right to challenge its sufficiency. Later that same day, LAUSD faxed a letter to New West purporting to "withdraw" its Proposition 39 facilities offer made more than four weeks earlier.

Since April 30, 2008, New West has attempted to persuade the LAUSD to comply with its offer and the law, in an effort to avoid this litigation. LAUSD has continued to refuse to comply with Proposition 39.

#### **D. Analysis**

##### **1. The Duty to Accommodate a Charter School**

In November 2000, California voters passed Proposition 39, which amended Ed. Code section 47614. Also known as the "Smaller Classes, Safer Schools and Financial Accountability Act," Proposition 39 requires school districts to provide public charter schools and the students who opt to attend those public charter schools with "reasonably equivalent" facilities to those they would have if they attended district-run schools." Prior to the passage of Proposition 39, a charter school's right to use school district facilities was "very limited initially; a charter school was entitled to use district facilities only if that would not interfere with the district's use of them. This restriction was effectively eliminated by Proposition 39." Ridgecrest Charter School v. Sierra Sands Unified School District, (2005) 130 Cal.App. 4th 986, 998-999. Now, a charter school's right to equitably share school district facilities is unequivocal and mandatory, even if it might cause some "disruption and dislocation" of district students. *Id.* at 1000.

The relevant portions of Proposition 39, as codified in the Education Code are as follows: "[t]he intent of the people in amending Section 47614 is that public school facilities should be shared fairly among all public school pupils, including those in charter schools." Ed. Code §47614(a). "Each school district shall make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district. Facilities provided shall be contiguous, furnished, and equipped, and shall remain the property of the school district. The school district shall make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate, and shall not move the charter school unnecessarily." Ed. Code §47614(b) (emphasis added).

"Proposition 39's stated intent is 'that public school facilities should be shared fairly among all public school pupils, including those in charter schools.'" Sequoia Union High School

District v. Aurora Charter High School, (2003) 112 Cal.App.4th 185, 191. The statutory language imposes a mandatory duty on districts to make available "...facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending public schools of the district." Ed. Code § 47614(b). Thus, district-operated facilities "shall" be shared among all public school students, including those who attend charter schools. Ridgecrest Charter School, *supra*, 130 Cal.App. 4th at 1002; Sequoia Union High School District, *supra*, 112 Cal.App.4th at 196.

The SBE has adopted regulations implementing Proposition 39, operative as of August 29, 2002. Sec 5 CCR §11969 *et seq.*<sup>1</sup> These regulations specify procedures and time lines for Proposition 39 facilities requests from charter schools. The regulations require charter schools to submit a facilities request to the school district "by October 1 of the preceding fiscal year." 5 CCR §11969.9(b). The regulations detail the information that must be provided to the district. "The school district shall review the projections and provide the charter school a reasonable opportunity to respond to any concerns raised by the school district regarding the projections." 5 CCR §11969.9(d). "The school district shall prepare a preliminary proposal regarding the space to be allocated to the charter school and the associated pro rata share amount and provide the charter school a reasonable opportunity to review and comment on the proposal." 5 CCR §11969.9(d). "The school district must provide a final notification of the space offered to the charter school by April 1 preceding the fiscal year for which facilities are requested. The school district notification must specifically identify: (1) the teaching station and non-teaching station space offered for the exclusive use of the charter school and the teaching station and non-teaching station space to be shared with district-operated programs; (2) for shared space, the arrangements for sharing; (3) the in-district classroom ADA assumptions for the charter school upon which the allocation is based and, if the assumptions are different than those submitted by the charter school, a written explanation of the reasons for the differences; (4) the pro rata share amount; and (5) the payment schedule for the pro rata share amount, which shall take into account the timing of revenues from the state and from local property taxes." 5 CCR §11969.9(e). The charter school must notify the school district in writing whether or not it intends to occupy the offered space. The notification must occur by May 1 or 30 days after the school district notification, whichever is later. 5 CCR §11969.90.

## **2. New West Timely Sought Space and Accepted LAUSD's Offer**

On October 1, 2007, New West timely submitted to LAUSD its complete request for facilities to house approximately 300 middle school students for the 2008-2009 school year, as described in its charter, pursuant to section 47614 and 5 CCR 11969(b). LAUSD conducted site reviews at each of its campuses to determine space availability for all of its Proposition 39 offers, district-wide. After that extensive review, on April 1, 2008, LAUSD sent a letter to New West offering the exclusive use of twelve "teaching stations" and one "non-teaching station" at Fairfax in an effort to meet the facility-sharing requirements of Proposition 39. See 5 CCR

<sup>1</sup>The regulations have been amended, but the amendments do not take effect until next year.

§11969.9(e). On April 24, 2008, LAUSD sent a letter to New West outlining the fees LAUSD expected to charge for the facilities and provided a sample facilities use agreement the District expected New West to execute for use of the facilities. This letter also noted that New West "must accept or reject the Proposition 39 offer made by LAUSD by May 1, 2008. If LAUSD does not receive an acceptance or rejection from you by May 1, 2008 the offer will be considered rejected."

New West accepted LAUSD's offer on April 30, 2008, by fax and by hand-delivering a notice of intent to occupy the facilities offered by LAUSD for the 2008-09 school year, all in accordance with the applicable regulations. See 5 CCR §11969.9(i). Later that day, but after New West delivered its notice of intent to occupy to LAUSD, the New West received a one paragraph letter from LAUSD Senior Deputy Superintendent Ray Cortines purporting to "withdraw[] the offer made to New West Charter of thirteen classrooms at Fairfax High School."<sup>2</sup>

Plainly, as a matter of contract law, the parties had a binding contract. LAUSD made an offer and New West timely accepted it. The fact that New West reserved its right to challenge any aspect of the offer that was unlawful does not affect this acceptance. The purported "withdrawal" letter was therefore legally meaningless as a matter of contract law.

The withdrawal was also meaningless under Proposition 39. Neither that law, nor any other provision of the Charter Schools Act, provides LAUSD with any authority to "withdraw" its mandatory obligation to share facilities with New West. The "withdrawal" only means that LAUSD failed to perform its mandatory duty under Proposition 39.<sup>3</sup>

### 3. The Opposition Contains a Parade of Unproven Horribles

In opposition, LAUSD does not offer any legal authority for its action. Instead, LAUSD presents 72 pages of declarations from its superintendent, chief of facilities, charter planning manager, associate general counsel, new construction manager, the principal of Fairfax, and outside counsel. The court has read all of these declarations, which consist of a litany about the "web" of statutory and other legal duties governing LAUSD, its size (700,000 students, 45,000 teachers, and 900 schools), the District's historical and perhaps existing overcrowding,<sup>4</sup> its evaluation of charter school space requests, its own schools' operating capacities, its effort to make charter offers based on geographical component, the problems at Fairfax, the need for small learning communities ("SLC") at Fairfax to maintain its accreditation for state college entrance requirements, the difficulties with portable classrooms, the problems with busing students, the problems with multi-track schedules, its efforts to meet classroom size reduction

<sup>2</sup>It appears that it succumbed to pressure from the teachers' union, which does not care for charter schools, which had staged a protest about the offer.

<sup>3</sup>LAUSD argues that New West has an adequate remedy at law of damages for its breach of contract claim. No such claim has been pled. The breach of contract is relevant only as evidence that LAUSD has violated its legal duty.

<sup>4</sup>New West presents evidence that LAUSD is facing declining enrollment and an excess of space, causing it to close schools.

goals, its consent decree in another case concerning maximum enrollments, construction bonds and other funding, implementation of full-day kindergarten programs, and the teacher's union opposition to "teacher traveling."

The sheer scope and number of matters discussed in these declarations demonstrates the weakness of LAUSD's position. Very little of the evidence even concerns New West. The portion that does is clearly inadequate. Thus, the Declaration of Ana Teresa Fernandez ("Fernandez") refers to a "provisional offer" to New West. There was nothing provisional about the offer made to New West pursuant to Prop. 39. That some teachers did not like it is irrelevant.<sup>5</sup>

The Declaration of Edward Zubiate purports to link accommodation of New West at Fairfax with loss of SLC's on campus without an explanation as to why. He also argues that it will be disruptive to the school's Master Calendar, which may be true, but not controlling since New West's right to equitably share facilities is mandatory, even if it might cause some "disruption and dislocation" of district students. Ridgecrest Charter School v. Sierra Sands Unified School District, *supra*, 130 Cal.App. 4th at 1000. After a lengthy investigation, LAUSD believed when it made the offer that Fairfax was available for New West's accommodation. There simply is insufficient evidence that it was wrong.

Even if *arguendo* Fairfax was not available, LAUSD has a duty to accommodate New West somewhere. The District presents only speculation and conclusions that it cannot do so without any evidence. The best it can offer is the Declaration of David Brewer, the District's Superintendent, which states that accommodation of charter schools "generate[s] ripple effects adversely affecting LAUSD students all across the District." ¶11. Of course, charter students are LAUSD students too. They, too, are entitled to the District's facilities. LAUSD's conclusion that location of charter students in an existing school would favor "charter school students over non-charter school students" is likewise unproven. ¶23.

In short, LAUSD has violated its statutory obligation to accommodate New West students. It has also breached a contract to do so.<sup>6</sup>

#### 4. Equitable Defenses

LAUSD argues that New West is guilty of laches, observing that it waited close to three months after LAUSD's purported withdrawal of the offer to seek relief. Classes have begun at

<sup>5</sup>When Fernandez says that the offer was "on hold" as of April 22, 2008, and New West was informed of this fact, this is inconsistent with Fernandez's own email to New West of April 28, which stated that the hold only related to classroom configuration.

<sup>6</sup>LAUSD suggests that New West lacks standing to make this claim. It argues that the SBE chartered New West, and it has not approved any change in location for it. LAUSD cites no authority that New West's obligations to the SBE bear on LAUSD's statutory obligations to accommodate New West's students. See Sequoia Union High School District v. Aurora Charter High School, (2003) 112 Cal.App.4th 185, 191 (school district's obligation to accommodate is to each charter school operating in the the district). LAUSD's similar argument that SBE is an indispensable party because it, not LAUSD, chartered New West fails for the same reason.

Fairfax, and it would be inconvenient and burdensome for LAUSD to fulfill the Proposition 39 facilities request.

New West's only response is to suggest that it was negotiating with LAUSD, hoping it would realize its mistake and honor its obligations. Given LAUSD's patently unreasonable and unlawful conduct, New West cannot be blamed for hoping to avoid litigation. LAUSD shirked its statutory obligation and cannot rely on an equitable defense of delay.<sup>7</sup>

In any event, LAUSD had since October 1, 2007 to figure out how to accommodate New West's Proposition 39 request, and has had since May 1, 2008 to assess how it would meet this obligation if compelled by litigation. If the District has failed to prepare a contingency plan, that failure is its own.

In a related argument, LAUSD points out that New West has renewed its lease and does not have need for LAUSD space. LAUSD does not acknowledge, however, that the lease renewal only occurred because it refused to provide accommodation. LAUSD cannot bootstrap New West's effort to mitigate the damage caused by LAUSD's actions into a reason to deny relief.

#### **E. Conclusion**

The Petition for Writ of Mandate is granted. LAUSD is ordered to fulfill its Proposition 39 duty, and its offer to New West, for the facilities offered at Fairfax High or other acceptable location for the school year 2008-09.<sup>8</sup>

New West's counsel is ordered to prepare a proposed judgment and writ of mandate, serve them on the opposing parties for approval as to form, wait 10 days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment and writ along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for October 3, 2008.

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It bears noting that all of New West's students reside within LAUSD, and are entitled to LAUSD's facilities as much as any student attending a LAUSD school.

LAUSD points out numerous duplicates supporting New West's facilities request. LAUSD is correct that it is obligated to provide facilities only for the number of students reasonably projected in New West's application. If New West does not need the requested facilities, no writ should issue compelling LAUSD to provide them. The court will discuss this issue with counsel at hearing.

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**FILED**  
LOS ANGELES SUPERIOR COURT

OCT 3 2008  
JOHN A. CLARKE, CLERK  
*A. Saperdo*  
BY A. FAJARDO, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
CENTRAL DISTRICT

NEW WEST CHARTER MIDDLE SCHOOL,

Case No.: BS115979

Petitioner,

~~PROPOSED~~ JUDGMENT  
GRANTING PEREMPTORY WRIT OF  
MANDATE AND ORDER

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT;  
BOARD OF EDUCATION OF THE LOS  
ANGELES UNIFIED SCHOOL DISTRICT; and  
DAVID L. BREWER III, in his capacity as  
Superintendent of Schools,

Respondents.

On September 5, 2008, in Department 85 of the above-entitled Court, the Honorable James C. Chalfant presiding, the Court heard the Petition for Writ of Mandate filed by Petitioner New West Charter Middle School ("New West" or "Petitioner") against the Respondents Los Angeles Unified School District ("LAUSD"); Board of Education of the LAUSD; and David L. Brewer III, in his capacity as Superintendent of Schools (collectively the "Respondents").

John C. Lemmo of Procopio, Cory, Hargreaves & Savitch, LLP, and Paul C. Minney of Spector, Middleton, Young & Minney, LLP appeared on behalf of Petitioner; Gregory G. Luke of Strumwasser & Woocher LLP and Mark Fall of the LAUSD's Office of General Counsel appeared on behalf of the Respondents. After hearing the evidence and the arguments of counsel and after considering all papers filed with the Court, and the cause having been argued and

~~PROPOSED~~ JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE; Case No.: BS115979

001294

1 submitted for decision, the Court issued its *Decision on Petition for Writ of Mandate: Granted*,  
2 attached hereto as *Exhibit 1*, which provides the Court's findings of fact and application of law in  
3 this action, and is fully incorporated herein.

4 **IT IS ORDERED, ADJUDGED AND DECREED:**

5 1. The Petition for Writ of Mandate is GRANTED.

6 2. A Peremptory Writ of Mandate shall issue (in the form attached hereto as *Exhibit*  
7 *2*) requiring the Respondents and ~~all persons and entities acting in concert with Respondents to~~ *its officers, agents, and employees*  
8 fulfill their duties and obligations to Petitioner under Education Code section 47614 and to  
9 ~~immediately provide New West with 13 classrooms at Fairfax High School to house 285 students~~ *prior to filing return of the writ*  
10 ~~as described in the LAUSD's Proposition 39 final offer dated April 1, 2008, or at another location~~  
11 ~~acceptable to New West.~~ *or other acceptable location for the school*  
12 *year 2008-09.*

13 ~~3. The Respondents are ordered to immediately provide 13 classrooms in full~~  
14 compliance with Education Code section 47614 and regulations applicable for the 2008-2009  
15 school year, and in compliance with the terms stated in the LAUSD's April 1, 2008 Offer, as  
16 follows:

- 17 a. The facilities shall be located at Fairfax High School or other single school  
18 site acceptable to Petitioner;  
19 b. The facilities shall include exclusive use of 12 "teaching station"  
20 classrooms, and the exclusive use of one "non-teaching station" classroom;  
21 c. The Respondents determined in the April 1, 2008 offer that the "pro rata  
22 share" charge for New West shall be no more than \$0.16 per square foot,  
23 or \$6,378 per annum. New West shall pay that amount for the use of the  
24 facilities;  
25 d. New West shall maintain and operate the facility, furnishings, and  
26 equipment in accordance with LAUSD standards as required by 5 CCR  
27 §11969.9(h)(2);  
28 e. The Respondents shall not impose any charges or requirements upon New  
West that are not expressly required by Education Code section 47614 and

- 1 the applicable regulations, including but not limited to any operation or  
2 maintenance charges;
- 3 f. The facilities shall be clean, furnished and equipped for use as middle  
4 school classrooms.
- 5 g. The Respondents shall provide reasonably equivalent shared facilities on  
6 the school site, which shall include but are not limited to: covered  
7 lunch/eating area for students, library, media center/computer lab,  
8 playfields, restrooms, parking spaces for staff, and staff breakroom, and a  
9 reasonable schedule or other arrangements for shared use. Respondents  
10 shall negotiate with Petitioners in good faith regarding such sharing  
11 arrangements.
- 12 h. The Respondents and any persons or entities acting in concert with  
13 Respondents are ordered to not interfere with New West's use and  
14 enjoyment of the facilities. Respondents shall distribute a copy of the  
15 Court's order to its employees at the school site.
- 16 i. Respondents shall comply with the Writ of Mandate by October 2, 2008.

17 4. The Respondents are ordered to fully comply with Proposition 39 and the  
18 Implementing Regulations as to New West <sup>for the 2008-09 school year.</sup> ~~new and going forward.~~

19 5. The Court retains jurisdiction to consider <sup>whether</sup> New West <sup>is entitled to</sup> damages pursuant to Code  
20 of Civil Procedure section 1095, by noticed motion or other applicable procedure.

21 6. <sup>The Court retains jurisdiction to determine whether</sup> Petitioner is the prevailing and successful party, and this Court retains jurisdiction  
22 <sup>Petitioner is entitled to costs and reasonable attorneys' fees by noticed motion.</sup> to determine Petitioner's entitlement to reasonable attorneys' fees by noticed motion.  
23 <sup>fees by noticed motion or other applicable procedure.</sup> Petitioner is awarded its costs of suit, to be determined pursuant to California

24 Rules of Court, Rule 3.1700.

25 8. ~~The Court orders that should an appeal be taken from this Judgment and Writ of~~  
26 Mandate, "the appeal shall not operate as a stay of execution" pursuant to this Court's authority  
27 under Code of Civil Procedure section 1110b. The Petitioner has made a sufficient showing in its  
28 Verified Petition and other arguments and evidence submitted to this Court that a stay would

1 ~~result in the denial of any relief to Petitioners.~~

2 9. The Court shall exercise continuing jurisdiction over this action to ensure that  
3 LAUSD complies with this Judgment and Writ of Mandate.

4  
5 Dated: 10/1/08

7 - Chalfant  
Hon. James C. Chalfant  
Judge of the Superior Court

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OCT - 3 2008 Writ of Mandate

RECORDED

# EXHIBIT E

**FILED**  
Superior Court of California  
County of Los Angeles

New West Charter Middle School v.  
LAUSD  
BS 115979

Tentative decision on motion to enforce  
writ: granted

NOV 21 2008

John A. Clarke, Executive Officer/Clerk  
By A. Sajarde, Deputy  
ANNETTE FAJARDO

Petitioner New West Charter Middle School ("New West") seeks an order to enforce the writ of mandamus issued by the court, compelling Respondent Los Angeles Unified School District ("LAUSD") to comply with its non-discretionary duties under Education Code section 47614 to provide reasonably equivalent school facilities. The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

**A. Statement of the Case**

New West commenced this proceeding on July 21, 2008, seeking to compel LAUSD to fulfill a mandatory obligation to provide its facilities to New West under Education Code §47614 and Proposition 39, enacted in November 2000.

**B. Applicable Law**

The court that issues a writ of mandate retains continuing jurisdiction to make any order necessary to its enforcement. CCP §§1097, 1105; County of Inyo v. City of Los Angeles, (1977) 71 Cal.App.3d 185, 205; *see also*, Professional Engineers in Cal. Govt. v. State Personnel Bd., (1980) 114 Cal.App.3d 101, 109. This authority is codified in California Code of Civil Procedure section 1097, which provides, in part, that when a peremptory writ has issued and is disobeyed, the court "may make any orders necessary and proper for the complete enforcement of the writ," but it is also an inherent power of the court. Kings v. Woods, (1983) 144 Cal. App.3d 571, 578.

Where the Writ remands the matter to Board with directions to proceed in a certain manner, and Board's Return states that the Court's mandate has been carried out, a petitioner may challenge the validity of that claim. CCP §1097. The petitioner may make either an oral or written motion requesting the court order the respondent to reconsider the writ further, or the court may make such a motion *sua sponte*. County of Inyo, supra, 71 Cal. App. 3d at 188.

**C. Analysis<sup>1</sup>**

On September 5, 2008, the court granted New West's Petition. On October 3, 2008, the Court issued its Writ of Mandate. LAUSD was ordered to fulfill its Proposition 39 duty, and its offer to New West for the facilities offered at Fairfax High or other acceptable location for the school year 2008-09 in compliance with Education Code section 47614 and its implementing regulations. The court ordered LAUSD "to fulfill its Proposition 39 duty," and ruled that "New West's right to equitably share facilities is mandatory, even if it might cause some 'disruption and dislocation' of district students."

LAUSD was required to provide space for 284 middle school students that was "reasonably equivalent" to the facilities it provides its "own" middle school students at "comparison schools" selected in accordance with the Implementing Regulations.

<sup>1</sup>New West's request for oral testimony is denied.

001576

### **1. Proximity to the Requested Area**

LAUSD is required "to make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate." Ed. Code §47614(b). New West's October 1, 2007 Request for Proposition 39 Facilities stated that its student population comes from the neighborhoods surrounding LAUSD's Local District 7. The Request also sought "any potential sites" located in an area bounded by Century Blvd. (LAX) to the south, Sunset Blvd. to the north, Pacific Coast Highway to the west, and La Cienega to the east."

LAUSD officials assigned New West to Logan Elementary. This location is in Local District 7. While it is some 15 miles from New West's present school location, the school's present location is not the site for which LAUSD must endeavor to provide reasonably proximate space. Rather, it is the location of New West's students, and they are indisputably in Local District 7. LAUSD could comply with its obligations by providing space in District 7 or near New West's school in District 3.

### **2. Group Comparison**

LAUSD had a duty to offer New West facilities reasonably equivalent to those the students would be in if attending other public schools of the district. Ed. Code §47614(b). This offer should be made based on comparison group of schools under Proposition 39. Ed. Code §47614(b); 5 Cal. Code Regs. §11969.3(a). A comparison is necessary because the facilities proposed must be reasonably equivalent (in both capacity and condition) to the middle school facilities enjoyed by students in the LAUSD schools that New West's students would otherwise attend. Ed. Code §47614(b); 5 Cal. Code Regs. §11969.3(a).

The first task to be performed is to identify the comparison group. "The comparison group shall be the school-district operated schools with similar grade levels [i.e. middle schools] that serve students living in the high school attendance area ... in which the largest number of students of the charter school reside." 5 Cal. Code Regs. §11969.3(a)(2).

The comparison group may be determined from New West's October 2007 application, which stated that "the student population of up to 600 students will come from the surrounding neighborhoods of Local District 7."

New West points out that the Request included hundreds of student applications indicating where the students reside, and the vast majority come from District 3. Specifically, the applications included a form with the following line: "[P]lease list the school within the District your son/daughter would otherwise attend." The high school attendance area where the largest number of students of New West's 312 students reside is University High School (121 New West students reside in that area), located in District 3.<sup>2</sup> The next largest group of New West students live in the attendance areas for Venice High School, Hamilton High School, and Palisades High School, in that descending order. All of these schools are in District 3. New West states that it intended to draw students from South Los Angeles, but has not received many letters of intent from that region.

The discrepancy perhaps lies in New West's projection of the South Los Angeles

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<sup>2</sup>Apparently, the school facilities are generally inferior in District 7 to those in District 3.

location from which "up to 600 students will come" and the actual location of New West's 312 students. In any event, LAUSD is entitled to rely on New West's own statements about the location of its students and for the comparison group of middle schools, which are "Bethune, Drew, Edison, Gompers, Markham and Muir Middle School." It was not required to add up the information in the student forms attached to the application.

However, LAUSD did not perform a comparison group analysis for District 7 middle schools. Instead, it simply investigated whether there were contiguous classrooms available at any location in South Los Angeles and in the alternative area of District 3. This "investigation" consisted of LAUSD's declarant, Ana Teresa Fernandez ("Fernandez"), asking unnamed "colleagues" whether they knew of any school site with 13 empty classrooms. This "investigation" identified Logan Elementary, located in an unknown District, which became available only because another charter school declined it in September. On October 6, 2008, LAUSD issued what it called an "offer" of space to New West at Logan Elementary School.

This effort does not meet the standards prescribed by Ed. Code section 47614(b) and the implementing regulations. Nor is it consistent with the court's order. LAUSD contends that Logan Elementary is the only set of contiguous classrooms in west central Los Angeles available to accommodate New West's 285 students. Based on availability, LAUSD contends that a comparison of a group of schools in District 7 was not required. It contends that it cannot "kick students out of school to accommodate New West in the middle of the school year."

LAUSD does not recognize that the reason why a serious disruption of students and teachers could even be necessary in the middle of the school year is because of its own failure to accommodate New West by providing the Fairfax space it promised. LAUSD should hardly be entitled to benefit from its wrongdoing. While students and teachers may be the innocent victims, some disruption and dislocation must be tolerated if necessary to provide a reasonable provision of space to New West. While a major disruption is not required, LAUSD did not even investigate the availability of space that could require some disruption of another school. For example, a school like Fairfax may have to forego a particular teaching program in order to accommodate New West. It simply is not enough to state that Logan Elementary is the only unused space in LAUSD.

### **3. Compliance with the Law and the Writ**

If Logan Elementary is in a location in District 7 or near New West's school in District 3, and if it meets the requirements that a comparison of middle schools in that District would provide, then it does not matter whether LAUSD performed a truncated analysis.

It is neither. Logan Elementary is in District 4. New West also says that the space offered does not meet the requirements of a comparable middle school. On October 13, 2008, after repeated requests by the principal of New West, LAUSD allowed New West representatives to see the space available at Logan Elementary School. The disparity between the district-operated elementary school classrooms, library, computer lab, multi-purpose auditorium, and cafeteria area, and the bare classrooms and facilities offered to New West was stark. LAUSD staff explained that New West's middle schools students would have no access to any library, computer lab, multi-purpose auditorium, or cafeteria areas. New West's designated student "eating area" was outdoors and barely separated by a wall from LAUSD's garbage dumpsters, which have a bad odor.

LAUSD disputes these facts. Fernandez says that during the site visit to Logan Elementary she offered use of the library, computer lab, multi-purpose auditorium, cafeteria, teacher lounge, and playgrounds, and assured New West that this use would be accommodated and coordinated with Logan Elementary's principal. She states that the facilities offered are reasonably equivalent to, and far exceed, those available to middle school students in South Los Angeles.

In reply, New West's Principal, Sharon Weir ("Weir"), states that she was told by Fernandez and the Logan Elementary principal that the auditorium was not available for New West because another charter school was sharing it with Logan, the cafeteria was not available to New West because Logan students used it all day and New West would have to use old wooden tables abutting a trash area. New West would not be allowed to use the teacher's lounge or an unused grassy area for physical education. New West could not use the staff parking garage and its teachers would have to park on the street. New West could use a blacktop area only when Logan was not using it, which was most of the day. All of the portable classrooms were in poor condition, with broken windows, not working air conditioning, and damaged ceilings and doors. New West's students could not use larger in-building bathrooms, and would have to use the bathrooms in the portable classrooms designed for very small children and porta-potties for larger children and adults.

Quite simply, LAUSD's claim that any extensive shared use of facilities was offered during the site visit is not believable. Nothing in the written offer indicates the availability of these teaching amenities. The October 6 says nothing about shared space. Facilities such as a library, computer lab, auditorium, and cafeteria would necessarily have to be shared. Given the deception that has marked LAUSD's conduct towards New West, its contention is not credible.

Given that the court accepts the truth of Weir's declaration, the facilities which were offered at Logan Elementary could not possibly meet the requirements that a comparison of middle schools in that District would provide. LAUSD is correct that New West has not provided any evidence of what that comparison would show. However, LAUSD was obligated to perform the comparison, and has not done so. The facilities offered are not an equal sharing with Logan Elementary students, and the fair inference is that they would not meet the requirements of a comparison of District 7 middle schools.

#### **D. Conclusion**

LAUSD has not complied with its legal obligations by providing an adequate offer of space in District 7 or District 3 based on a comparison group analysis of facilities in District 7. LAUSD's obligations under Proposition 39 run from school year to school year. LAUSD has delayed meeting its mandatory duty by more than six months. The motion to enforce the writ is granted.

As a remedy, New West asks for immediate compliance or in the alternative its actual damages for LAUSD's failure to comply with its April 1, 2008 offer. "If judgment be given for the applicant, the applicant may recover the damages which the applicant has sustained... as may be determined by the court...." CCP § 1095, "Damages may appropriately be awarded in mandamus proceedings." Warner v. North Orange County Community College District, (1979) 99 Cal.App.3d 617, 628. It appears that immediate compliance may not be feasible. If New West wishes to pursue damages in lieu of compliance, the court will require additional briefing

concerning the measure and amount of damages.

Code of Civil Procedure section 1097 also provides that where an agency, board or person has "refused or neglected to obey [the writ], the Court may, upon motion, impose a fine not exceeding one thousand dollars" upon that agency, board, or person. LAUSD has paid only lip service to its legal obligations, and has effectively refused to comply with the writ. LAUSD had an obligation to identify and provide reasonably equivalent facilities in reasonable proximity to the area where New West wished to locate.

LAUSD did not perform this task. LAUSD will be fined the sum of \$1,000 pursuant to CCP section 1097, payable within 30 days and collectible as a judgment, due to its deliberate refusal to comply with the writ.

44-1567-001

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 11/21/08

DEPT. 85

HONORABLE JAMES C. CHALFANT

JUDGE

A. FAJARDO

DEPUTY CLERK

HONORABLE  
#7

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

J. DE LUNA, C.A.

Deputy Sheriff

J. CAMPBELL, CSR #11859

Reporter

9:30 am BS115979

Plaintiff

JOHN C. LEMMO [X]

Counsel

PAUL C. MINNEY [X]

NEW WEST CHARTER MIDDLE SCHOOL

VS

Defendant

GREGORY G. LUKE [X]

LOS ANGELES UNIFIED SCHOOL

Counsel

MARK FALL [X]

DISTRICT ET AL

## NATURE OF PROCEEDINGS:

MOTION OF PETITIONER, NEW WEST CHARTER MIDDLE SCHOOL, FOR ORDER FOR THE COMPLETE ENFORCEMENT OF WRIT PURSUANT TO CODE OF CIVIL PROCEDURE 1097; OR IN THE ALTERNATIVE, MOTION FOR AWARD OF MONETARY DAMAGES PURSUANT TO CODE OF CIVIL PROCEDURE 1095

The matter is called for hearing.

Counsel read the Court's tentative ruling.

After argument of Counsel, the Court rules in accordance with it's tentative which is adopted and filed as the final ruling of the Court.

The Motion to Enforce Writ is granted. LAUSD will be fined \$1,000.00 pursuant to CCP Section 1097, payable within 30 days and collectible as a judgment, due to its deliberate refusal to comply with the writ.

A HEARING RE: FUTURE DAMAGES is set on JANUARY 27, 2009 at 9:30a.m. in this department.

The briefing schedule is to be governed by Code of Civil Procedure Section 1005 unless Counsel stipulate otherwise.

Notice is waived.

Page 1 of 1 DEPT. 85

MINUTES ENTERED 11/21/08 COUNTY CLERK
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001581

NOV. 26. 2008 12:02PM

NO. 6882 P. 4

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Please take notice that on October 3, 2008, the Honorable James C. Chalfant entered  
3 Judgment in the above-referenced action. The Judgment is attached hereto as Exhibit 1. This  
4 Notice of Entry of Judgment is provided in compliance with California Rules of Court, Rule  
5 8.104.  
6

7 DATE: NOVEMBER 26, 2008

PROCOPIO, CORY, HARGREAVES  
& SAVITCH LLP

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10 BY: 

JOHN C. LEMMO  
ATTORNEYS FOR PETITIONER NEW WEST  
CHARTER MIDDLE SCHOOL  
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NOTICE OF ENTRY OF JUDGMENT; Case No.: BS115979

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NO. 6882 P. 5

# EXHIBIT 1

11/27/08

Document2

001584

c. 124

**FILED**  
LOS ANGELES SUPERIOR COURT

OCT 9 2008

JOHN A. CLARKE, CLERK  
*A. Fajardo*  
BY A. FAJARDO, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
CENTRAL DISTRICT

NEW WEST CHARTER MIDDLE SCHOOL,

Case No.: BS115979

Petitioner,

~~PROPOSED~~ JUDGMENT  
GRANTING PEREMPTORY WRIT OF  
MANDATE AND ORDER

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT;  
BOARD OF EDUCATION OF THE LOS  
ANGELES UNIFIED SCHOOL DISTRICT; and  
DAVID L. BREWER III, in his capacity as  
Superintendent of Schools,

Respondents.

On September 5, 2008, in Department 85 of the above-entitled Court, the Honorable James C. Chalfant presiding, the Court heard the Petition for Writ of Mandate filed by Petitioner New West Charter Middle School ("New West" or "Petitioner") against the Respondents Los Angeles Unified School District ("LAUSD"); Board of Education of the LAUSD; and David L. Brewer III, in his capacity as Superintendent of Schools (collectively the "Respondents").

John C. Lentino of Procopio, Cory, Hargreaves & Savitch, LLP, and Paul C. Minney of Spector, Middleton, Young & Minney, LLP appeared on behalf of Petitioner; Gregory G. Luke of Strumwasser & Woocher LLP and Mark Fall of the LAUSD's Office of General Counsel appeared on behalf of the Respondents. After hearing the evidence and the arguments of counsel and after considering all papers filed with the Court, and the cause having been argued and

~~PROPOSED~~ JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE; Case No.: BS115979

EXI  
001585

submitted for decision, the Court issued its Decision on Petition for Writ of Mandate: Granted, attached hereto as Exhibit 2, which provides the Court's findings of fact and application of law in this action, and is fully incorporated herein.

IT IS ORDERED, ADJUDGED AND DECREED:

1. The Petition for Writ of Mandate is GRANTED.

2. A Peremptory Writ of Mandate shall issue (in the form attached hereto as Exhibit 2) requiring the Respondents and all persons and entities acting in concert with Respondents to fulfill their duties and obligations to Petitioner under Education Code section 47614 and to immediately provide New West with 13 classrooms at Fairfax High School to house 285 students as described in the LAUSD's Proposition 59 final offer dated April 1, 2008, or at another location acceptable to New West or other acceptable location for the school year 2008-09.

The Respondents are ordered to immediately provide 13 classrooms in full compliance with Education Code section 47614 and regulations applicable for the 2008-2009 school year, and in compliance with the terms stated in the LAUSD's April 1, 2008 Offer, as follows:

- a. The facilities shall be located at Fairfax High School or other single school site acceptable to Petitioner;
- b. The facilities shall include exclusive use of 12 "teaching station" classrooms, and the exclusive use of one "non-teaching station" classroom;
- c. The Respondents determined in the April 1, 2008 offer that the "pro rata share" charge for New West shall be no more than \$0.16 per square foot, or \$6,378 per annum. New West shall pay that amount for the use of the facilities;
- d. New West shall maintain and operate the facility, furnishings, and equipment in accordance with LAUSD standards as required by 5 CCR §11969.9(h)(2);
- e. The Respondents shall not impose any charges or requirements upon New West that are not expressly required by Education Code section 47614 and

001586

- 1 the applicable regulations, including but not limited to any operation or  
 2 maintenance charges;
- 3 f. The facilities shall be clean, furnished and equipped for use as middle  
 4 school classrooms.
- 5 g. The Respondents shall provide reasonably equivalent shared facilities on  
 6 the school site, which shall include but are not limited to: covered  
 7 lunch/eating area for students, library, media center/computer lab,  
 8 playfields, restrooms, parking spaces for staff, and staff breakroom, and a  
 9 reasonable schedule or other arrangements for shared use. Respondents  
 10 shall negotiate with Petitioners in good faith regarding such sharing  
 11 arrangements.
- 12 h. The Respondents and any persons or entities acting in concert with  
 13 Respondents are ordered to not interfere with New West's use and  
 14 enjoyment of the facilities. Respondents shall distribute a copy of the  
 15 Court's order to its employees at the school site.
- 16 i. Respondents shall comply with the Writ of Mandate by October 2, 2008.
- 17 4. The Respondents are ordered to fully comply with Proposition 39 and the  
 18 Implementing Regulations as to New West ~~now and going forward~~ *for the 2008-09 school year.*
- 19 5. The Court retains jurisdiction to consider New West's ~~damages pursuant to Code~~ *whether is entitled to*  
 20 of Civil Procedure section 1095, by noticed motion or other applicable procedure.
- 21 6. *The Court retains jurisdiction to determine whether*  
 22 *Petitioner is the prevailing and successful party, and this Court retains jurisdiction*  
 23 *Petitioner is entitled to costs and reasonable attorneys' fees by noticed motion.*  
 24 *7. Petitioner is awarded the costs of suit, to be determined pursuant to California*  
 25 *Rules of Court, Rule 3.1700.*
- 26 8. ~~The Court orders that should an appeal be taken from this judgment and Writ of~~  
 27 Mandate, "the appeal shall not operate as a stay of execution" pursuant to this Court's authority  
 28 under Code of Civil Procedure section 1110b. The Petitioner has made a sufficient showing in its  
 Verified Petition and other arguments and evidence submitted to this Court that a stay would

001587

1 ~~result in the denial of any relief to Petitioners.~~

2 9. The Court shall exercise continuing jurisdiction over this action to ensure that  
3 LAUSD complies with this Judgment and Writ of Mandate.

4  
5 Dated: 10/1/08

6 James C. Chalfant  
7 Hon. James C. Chalfant  
8 Judge of the Superior Court  
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OCT - 3 2008 Writ of Mandate

4  
JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE; Case No.: BS215979

001588

*New West Charter Middle School v. Los Angeles Unified School District, et al.*  
LASC Case No. BS115979

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, 530 "B" Street, Suite 2100, San Diego, California 92101. On November 26, 2008, I served the within document:

1. NOTICE OF ENTRY OF JUDGMENT; AND
2. PROOF OF SERVICE

☐ BY FACSIMILE [Code Civ. Proc. §1013(e)] by transmitting via facsimile number (619) 235-0398 the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. A copy of the transmission confirmation report is attached hereto.

☒ BY U.S. MAIL [Code Civ. Proc. §1013(a)] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Mark Fall, Esq.  
Litigation and Labor Division  
Office of General Counsel  
Los Angeles Unified School District  
333 S. Beaudry Avenue, 24th Floor  
Los Angeles, California 90017  
Phone: (213) 241-4969  
Fax (213) 241-8386  
Email: [mark.fall@lausd.net](mailto:mark.fall@lausd.net)

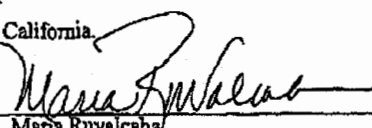
Gregory G. Luke, Esq.  
Michael J. Strumwasser, Esq.  
STRUMWASSER & WOOCHER LLP  
100 Wilshire Blvd., Suite 1900  
Santa Monica, CA 90401  
Phone: (310) 576-1233  
Fax: (310) 319-0156  
Email: [gluke@strumwooch.com](mailto:gluke@strumwooch.com)

☐ BY OVERNIGHT DELIVERY [Code Civ. Proc. §1013(d)] by placing the document(s) listed above in a sealed overnight envelope and depositing it for overnight delivery at San Diego, California, addressed as set forth below. I am readily familiar with the practice of this firm for collection and processing of correspondence for processing by overnight mail. Pursuant to this practice, correspondence would be deposited in the overnight box located at 530 "B" Street, San Diego, California 92101 in the ordinary course of business on the date of this declaration.

☐ BY ELECTRONIC SERVICE [Code Civ. Proc. §1010.6] by electronically mailing the document(s) listed above to the e-mail address(es) set forth below, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure Section 1010.6.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 26, 2008, at San Diego, California.

  
Maria Ruvalcaba

# EXHIBIT F



**Los Angeles Unified School District**  
**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

**David L. Brewer III**  
Superintendent

**Ramón C. Cortines**  
Senior Deputy Superintendent

**José J. Cole-Gutiérrez**  
Executive Director

**Mary H. Shambra**  
Director

December 1, 2008

**SENT VIA US MAIL, FAX AND EMAIL**

Emily Weinstein  
Animo Westside Charter Middle School  
350 S. Figueroa St., Suite 213  
Los Angeles, CA 90071

**RE: Animo Westside Charter Middle School Request for Facilities under Education Code §47614**

Dear Charter School Operator/Principal,

The purpose of this letter is to acknowledge your application on behalf of Animo Westside Charter Middle School requesting facilities under Education Code §47614.

Upon careful examination, Los Angeles Unified School District ("District") personnel did not find evidentiary support for your estimated in-district ADA of 154 students for the 2009-10 school year. Title 5 CCR Section 11969.9(c)(1)(B) requires your facilities request to include supporting documentation. The application distributed by the Charter Schools Division on October 3, 2008 required "documentation of the number of in-district students meaningfully interested in attending the Charter School." Your application included a roster of 261 students meaningfully interested in enrolling in Animo Westside Charter Middle School in the 2009-10 school year.

Review of the roster verified that only 36 students were old enough to attend the 6<sup>th</sup> grade at Animo Westside Charter Middle School in the 2009-10 school year. The remaining 225 students were ineligible as they were either too young or old based on the birthdates provided in the roster of meaningfully interested students.

Education Code 47614 (b) (5) defines operating as "having identified at least 80 in-district students who are meaningfully interested in enrolling in the charter school for the following year." Your application indicates that Animo Westside Charter Middle School will have less than an 80 in-district ADA for the 2009-10 school year. Based on this finding, Animo Westside Charter Middle School is ineligible for facilities under Education Code §47614.

If you have any questions or concerns, please feel free to contact Ana Teresa Fernandez at (213) 241-5433.

Sincerely,

  
Gregory L. McNair  
Associate General Counsel II

c: Ana Teresa Fernandez  
Jose Cole-Gutierrez  
Mary Shambra



**Los Angeles Unified School District**  
**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

**David L. Brewer III**  
Superintendent

**Ramón C. Cortines**  
Senior Deputy Superintendent

**José J. Cole-Gutiérrez**  
Executive Director

**Mary H. Shambra**  
Director

December 1, 2008

**SENT VIA US MAIL, FAX AND EMAIL**

Emily Weinstein  
Animo SELF Charter Middle School  
350 S. Figueroa St., Suite 213  
Los Angeles, CA 90071

**RE: Animo SELF Charter Middle School Request for Facilities under Education Code §47614**

Dear Charter School Operator/Principal,

The purpose of this letter is to acknowledge your application on behalf of Animo SELF Charter Middle School requesting facilities under Education Code §47614.

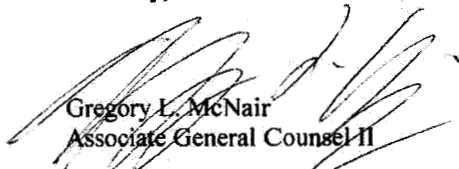
Upon careful examination, Los Angeles Unified School District ("District") personnel did not find evidentiary support for your estimated in-district ADA of 154 students for the 2009-10 school year. Title 5 CCR Section 11969.9(c)(1)(B) requires your facilities request to include supporting documentation. The application distributed by the Charter Schools Division on October 3, 2008 required "documentation of the number of in-district students meaningfully interested in attending the Charter School." Your application included a roster of 165 students meaningfully interested in enrolling in Animo SELF Charter Middle School in the 2009-10 school year.

Review of the roster verified that only 35 students were old enough to attend the 6<sup>th</sup> grade at Animo SELF Charter Middle School in the 2009-10 school year. The remaining 130 students were ineligible as they were either too young or old based on the birthdates provided in the roster of meaningfully interested students.

Education Code 47614 (b) (5) defines operating as "having identified at least 80 in-district students who are meaningfully interested in enrolling in the charter school for the following year." Your application indicates that Animo SELF Charter Middle School will have less than an 80 in-district ADA for the 2009-10 school year. Based on this finding, Animo SELF Charter Middle School is ineligible for facilities under Education Code §47614.

If you have any questions or concerns, please feel free to contact Ana Teresa Fernandez at (213) 241-5433.

Sincerely,

  
Gregory L. McNair  
Associate General Counsel II

c: Ana Teresa Fernandez  
Jose Cole-Gutierrez  
Mary Shambra



*Los Angeles Unified School District*  
**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

David L. Brewer III  
Superintendent

Ramón C. Cortines  
Senior Deputy Superintendent

José J. Cole-Gutiérrez  
Executive Director

Mary H. Shambra  
Director

December 1, 2008

**SENT VIA US MAIL, FAX AND EMAIL**

Edward Morris  
Futuro Prep  
2607 South Holt Avenue  
Los Angeles, CA 90034

**RE: Futuro Prep Request for Facilities under Education Code §47614**

Dear Charter School Operator/Principal,

The purpose of this letter is to acknowledge your application on behalf of Futuro Prep requesting facilities under Education Code §47614.

Upon careful examination, Los Angeles Unified School District ("District") personnel did not find evidentiary support for your estimated in-district ADA of 113 students for the 2009-10 school year. Title 5 CCR Section 11969.9(c)(1)(B) requires your facilities request to include supporting documentation. The application distributed by the Charter Schools Division on October 3, 2008 required "documentation of the number of in-district students meaningfully interested in attending the Charter School." Your application included a roster of 84 students meaningfully interested in enrolling in Futuro Prep in the 2009-10 school year.

Based upon the breakdown of students per grade level provided in the "Request for District Facilities for a Charter School" form, Future Prep intends to serve an ADA of 55 in-district kindergarten students and 58 1<sup>st</sup> grade students in the 2009-10 school year. The roster provided only indicates names of 22 1<sup>st</sup> grade students. The remaining names are of kindergarten students. As a result, only 77 of the 84 students listed in the roster are eligible to attend Future Prep in the 2009-10 school year.

Education Code 47614 (b) (5) defines operating as 'having identified at least 80 in-district students who are meaningfully interested in enrolling in the charter school for the following year.' Your application indicates that Future Prep will have less than an 80 in-district ADA for the 2009-10 school year. Based on this finding, Future Prep is ineligible for facilities under Education Code §47614.

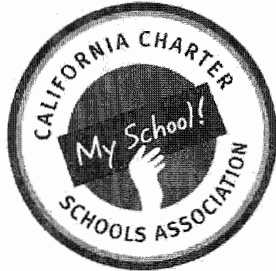
If you have any questions or concerns, please feel free to contact Ana Teresa Fernandez at (213) 241-5433.

Sincerely,

  
Gregory L. McNair  
Associate General Counsel II

c: Ana Teresa Fernandez  
Jose Cole-Gutierrez  
Mary Shambra

# EXHIBIT G



VIA E-MAIL AND  
U.S. MAIL

January 29, 2009

Jose Cole-Gutierrez  
Director, Charter Schools Division  
Los Angeles Unified School District  
333 S. Beaudry Ave  
Los Angeles, CA 90017

Re: 2009-10 Proposition 39 Facilities Requests

Dear Mr. Cole-Gutierrez:

We are writing to share concerns we have with the District's implementation of Proposition 39 for the 2009-10 school year. We understand that by ignoring valid evidence supporting ADA projections, the District has determined that eleven charter schools are ineligible for facilities, and that many more are not eligible for the full ADA they projected. We further understand that the District has contemplated ignoring its obligation to make all schools preliminary offers by February 1. We demand that the district immediately re-evaluate its implementation process to ensure compliance with the revised Prop. 39 Implementing Regulations. A brief summary of the concerns follows.

As an important reminder, the State Board of Education revised the Prop. 39 Implementing Regulations for the 2009-10 school year. Among the revisions were significant changes to a charter school's obligation to submit supporting documentation for its ADA projections. In particular, under section 11969.9(c)(1)(C) of the Implementing Regulations, a charter school's written facilities request must consist of:

*if relevant (i.e., when a charter school is not yet open or to the extent an operating charter school projects a substantial increase in in-district ADA), documentation of the number of in-district students meaningfully interested in attending the charter school that is sufficient for the district to determine the reasonableness*

*of the projection, but that need not be verifiable for precise arithmetical accuracy.*

Additionally, the Implementing Regulations as revised established a new, iterative process between charter schools and districts, requiring districts to express any objections to a charter school's ADA projections and allowing charter schools the opportunity to respond to those concerns. (Implementing Regulations, Section 11969.9(d)-(f).) In this process, schools first submit their request to the District with ADA projections on November 1. By December 1, districts must submit any objections to the charter schools. By January 2, charter schools must respond to the district's objections. And by February 1, the District must make its preliminary offer of facilities.

Based upon information gathered from our requests under the Public Records Act and conversations with our member charter schools, we understand that the District is not honoring these sections of the Implementing Regulations.

First, the District has in many cases ignored schools' documentation of historical enrollment, retention, and growth trends, prior ADA figures, and/or historical and current wait list information, along with other valid evidence. Instead, the district in many cases only acknowledged one-to-one verification of specific names of meaningfully interested students to justify ADA projections. This practice violates the Implementing Regulations' express provision that the projections "need not be verifiable for precise arithmetical accuracy."

Second, we understand that the District rejected outright many schools' ADA projections, deeming approximately 11 schools "ineligible" for facilities. The District sent those schools letters on December 1 informing them of this determination without informing the schools of their right to respond to the District's determination by January 2. In doing so, the District cut off the iterative process for those schools, completely ignoring this section of the revised Implementing Regulations.

Third, we understand that the District unilaterally reduced many schools' ADA projections in its December 1 correspondence. These schools understood from the District that it would not consider any additional evidence, documentation or explanation that the school might produce in its January 2 response in order to address the District's ADA reduction. Again, the District cut off the iterative process for these schools, ignoring a requirement of the Implementing Regulations.

Fourth, it appears that the District has imposed a new requirement to existing charter schools' ADA projections—that the ADA projection must correspond, one-to-one with a "meaningfully interested" student. We recognize that to be eligible for facilities under Prop. 39, an existing charter school must demonstrate at least 80 in-district students who are "meaningfully interested" in attending the school. However, once an existing charter school meets this minimum threshold, the "meaningfully interested" documentation standard does not apply. An existing school must provide only a reasonable projection of anticipated ADA along with a description of the methodology used to make that projection.

Finally, the District has asked some schools to forgo their rights to receive a preliminary offer. District staff asked charter schools to agree that the District will

not be providing a preliminary offer by February 1 in order to provide additional time to negotiate on a particular site. We suggest that one of the main reasons for a preliminary offer is to encourage negotiation. The State Board of Education added the February 1 deadline to ensure that districts make preliminary offers with sufficient time for negotiation even if specific details of the proposed site must be worked out in the negotiation process. We urge the district to make preliminary offers by the February 1 deadline in compliance with the revised Implementing Regulations.

These practices are frustrating given the District and the Association's commitment to work together toward satisfying all Association member schools' requests for facilities. The District and the Association memorialized this commitment in the April 22, 2008 settlement agreement, which provides: "[once] a CCSA member charter school submits a future facilities request that is legally sufficient under Proposition 39 and any Proposition 39 Implementing Regulations in effect at that time, LAUSD shall make a facilities offer to that charter school that complies with Proposition 39 and any Proposition 39 Implementing Regulations in effect at that time." Settlement Agreement, §4.

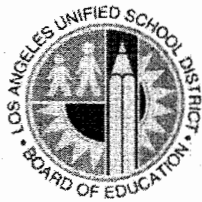
We urge the District work toward rectifying these issues. As always, we are available to assist in that effort.

Sincerely,

Gary Borden  
California Charter Schools Association

C: Mr. John Creer,  
Ms. Ana Teresa Fernandez

# EXHIBIT H



*Los Angeles Unified School District*  
**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

**Ramón C. Cortines**  
Superintendent

**José J. Cole-Gutiérrez**  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Emily Weinstein  
Animo SELF Charter Middle School  
350 S. Figueroa St., Suite 213  
Los Angeles, CA 90071

**RE: Animo SELF Charter Middle School Request for Facilities under Education Code §47614**

Dear Charter School Operator,

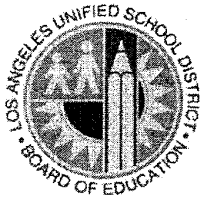
This letter acknowledges your response on behalf of Animo SELF Charter Middle School to the District's December 1, 2008 letter. The District maintains its estimated ADA projections for Animo SELF Charter Middle School in the 2009-10.

Thank you in advance for your understanding.

Sincerely,

José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*  
**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

**Ramón C. Cortines**  
Superintendent

**José J. Cole-Gutiérrez**  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Hrag Hamalian  
Valor Academy Charter School  
1838 Hermosa Ave  
Hermosa Beach, CA 90254

**RE: Valor Academy Charter School Request for Facilities under Education Code §47614**

Dear Charter School Operator,

This letter acknowledges your response on behalf of Valor Academy Charter School to the District's December 1, 2008 letter. The District maintains its estimated ADA projections for Valor Academy Charter School in the 2009-10.

Thank you in advance for your understanding.

Sincerely,

A handwritten signature in black ink, appearing to read "Jose J. Cole-Gutierrez".

José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*  
**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

**Ramón C. Cortines**  
Superintendent

**José J. Cole-Gutiérrez**  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Emily Weinstein  
Animo Westside Charter Middle School  
350 S. Figueroa St., Suite 213  
Los Angeles, CA 90071

**RE: Animo Westside Charter Middle School Request for Facilities under Education Code §47614**

Dear Charter School Operator,

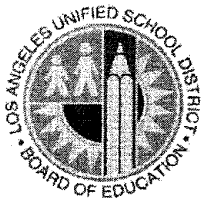
This letter acknowledges your response on behalf of Animo Westside Charter Middle School to the District's December 1, 2008 letter. The District maintains its estimated ADA projections for Animo Westside Charter Middle School in the 2009-10.

Thank you in advance for your understanding.

Sincerely,

José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*  
**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

**Ramón C. Cortines**  
Superintendent

**José J. Cole-Gutiérrez**  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Malka Borrego  
Equitas Academy Charter School  
1927 E. 3rd Street  
Long Beach, CA 90802

**RE: Equitas Academy Charter School Request for Facilities under Education Code §47614**

Dear Charter School Operator,

This letter acknowledges your response on behalf of Equitas Academy Charter School to the District's December 1, 2008 letter. The District maintains its estimated ADA projections for Equitas Academy Charter School in the 2009-10.

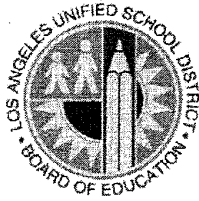
Thank you in advance for your understanding.

Sincerely,

A handwritten signature in black ink, appearing to read "Jose J. Cole-Gutierrez".

José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*  
**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

**Ramón C. Cortines**  
Superintendent

**José J. Cole-Gutiérrez**  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Edward Morris  
Futuro College Preparatory Elementary School  
2607 South Holt Avenue  
Los Angeles, CA 90034

**RE: Futuro College Preparatory Elementary School Request for Facilities under Education Code §47614**

Dear Charter School Operator,

This letter acknowledges your response on behalf of Futuro College Preparatory Elementary School to the District's December 1, 2008 letter. The District maintains its estimated ADA projections for Futuro College Preparatory Elementary School in the 2009-10.

Thank you in advance for your understanding.

Sincerely,

José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair

# EXHIBIT I

GREEN DOT PUBLIC SCHOOLS

December 29, 2008

Sent via Hand Delivery and E-mail

Ana T. Fernandez  
Charter Schools Division  
Los Angeles Unified School District  
333 S. Beaudry Ave.  
Los Angeles, CA 90012

Re: Proposition 39 Facilities Request

Dear Mr. McNair and Ms. Fernandez:

The Animo SELF Charter Middle School ("Charter School") is in receipt of your December 1, 2008 letter regarding our request for facilities for the 2009-10 school year. In that letter, the District objected to the supporting documentation verifying the projected number of in-district students meaningfully interested in attending the Charter School, citing "only 36 students were old enough to attend the 6<sup>th</sup> grade at SELF in the 2009-10 school year." This letter responds to those objections, as required under Section 11969.9(e) of the Proposition 39 Implementing Regulations, and asks that the District accept our original ADA projections of 171 students provided in our November 1, 2008 request for facilities.

The District has agreed to comply with the revised Proposition 39 regulations and is currently failing to do so. Under the new Proposition 39 regulations, the purpose of the District's December 1<sup>st</sup> correspondence was to express concerns with a charter school's ADA projections, not to reject the school's application at this time. The December 1<sup>st</sup> letter should have provided guidance on how to respond to the District's concerns with the school's Proposition 39 application. Our letter contained only an outright rejection with no guidance provided.

Additionally, the definition of meaningfully interested students was never previously stated by the District, nor has it been used in the past. By changing and narrowly defining meaningfully interested students after Proposition 39 applications had been submitted, the District has gone against the intent of the April 22nd, 2008 Settlement Agreement by and between the California Charter Schools Association (CCSA), Partnerships to Uplift Communities (PUC), Green Dot Public Schools (Green Dot) and the Los Angeles Unified School District. In the Settlement Agreement the District agreed to make a facility offer to any charter that submits a legally sufficient Proposition 39 application.

As you are aware, the revised Proposition 39 regulations require a school which is not yet open or which projects a "substantial increase" in in-district ADA to submit documentation of the number of students "meaningfully interested" in attending the school. The regulations *do not* specify or require a particular type of supporting documentation to be used. Indeed, schools may submit any type of supporting documentation which they used to arrive at their ADA projections. This documentation must be "sufficient for the district to determine the reasonableness of the projection, but

GREEN DOT PUBLIC SCHOOLS

... need not be verifiable for precise arithmetical accuracy." (Section 11969.9(c)(1)(C); emphasis added.) We object to the District's disproportionate reliance on parental signatures and age of students, the District's attempt to use that data to arrive at precise arithmetical accuracy, and the District's narrow and last minute change to the definition of meaningfully interested. The supporting documentation is intended *only* to demonstrate reasonableness of the request, not mathematical exactitude. Green Dot's Proposition 39 Application contained approximately 165 parent signatures of parents of meaningfully interested students, an affidavit signed by the CEO of Green Dot and documentation supporting Green Dot's track record of filling incoming classes and ADA projections for all 17 Green Dot schools. We remain confident with our projections and urge the District to accept our original ADA projections of 171 students provided in our November 1, 2008 request for facilities.

We look forward to receiving from the District on or before February 1, 2009 your written preliminary proposal regarding the space the District allocates Charter School under Section 11969.9(f).

Sincerely,

  
Marco Petrucci  
CEO, Green Dot Public Schools

Dan Chang for Marco Petrucci

Attachments:

1. District December 1, 2008 letter to Charter School.
2. ~~Supporting Documentation: Parent signatures of meaningfully interested students.~~
3. Copy of affidavit previously submitted.

Cc: Gregory L. McNair



December 23, 2008

Sent via Fax and Mail [or Hand Delivery]

Gregory L. McNair  
Associate General Counsel II  
Charter Schools Division  
Los Angeles Unified School District  
333 S. Beaudry Ave.  
Los Angeles, CA 90012

Re: Proposition 39 Facilities Request

Dear Mr. McNair:

The Valor Academy Charter School is in receipt of your December 1, 2008 letter regarding our request for facilities for the 2009-10 school years. In that letter, the District found Valor Academy ineligible for facilities based on our providing less than 80 signatures of students "meaningfully interested" in attending the school. This letter responds to those objections, as required under Section 11969.9(e) of the Proposition 39 Implementing Regulations, and asks that the District accept our original ADA projections provided in our November 1, 2008 request for facilities.

The District agreed to comply with the revised Proposition 39 regulations and is currently failing to do so. Under the new Proposition 39 regulations, the purpose of the District's December 1<sup>st</sup> correspondence was to express concerns with a charter school's ADA projections, not to reject the school's application at this time. The December 1<sup>st</sup> letter should have provided guidance on how to respond to the District's concerns with the school's Proposition 39 application. Our letter contained only an outright rejection with no guidance provided.

The revised Proposition 39 regulations intend that the December 1<sup>st</sup> correspondence outline District concerns with schools' ADA projections, and then allows charter schools the opportunity to provide additional information in direct response to that December 1<sup>st</sup> letter. Schools must then reaffirm or modify their



Dec 29 2008 7:51 P.02

Fax: 12019864264

BURNS & ROE



ADA projections in response to the District's concerns. In keeping with the new regulations, Valor Academy is enclosing additional signatures to support its reaffirmed ADA projections.

As you are aware, the revised Proposition 39 regulations require a school which is not yet open or which projects a "substantial increase" in in-district ADA to submit documentation of the number of students "meaningfully interested" in attending the school. The regulations *do not* specify or require a particular type of supporting documentation to be used. Indeed, schools may submit any type of supporting documentation which they used to arrive at their ADA projections. This documentation must be "sufficient for the district to determine the reasonableness of the projection, but ... *need not be verifiable for precise arithmetical accuracy.*" (Section 11969.9(c)(1)(C); emphasis added.) We object to the District's disproportionate reliance on parental signatures and wait list numbers and the District's attempt to use that data to arrive at precise arithmetical accuracy. The supporting documentation is intended *only* to demonstrate reasonableness of the request, not mathematical exactitude.

Hrag Hamalian, the lead founder of Valor Academy spoke with Ana Fernandez from the LAUSD asking what additional information the school should provide to respond to the district's concern. We are providing the above information which we believe may address your concerns. We welcome any guidance from you about any documentation or information we may still provide to further respond to your concerns.

We look forward to receiving from the District on or before February 1, 2009 your written preliminary proposal regarding the space the District allocates Valor Academy under Section 11969.9(f).

Sincerely,

Hrag Hamalian  
Lead Founder and Head of School  
Valor Academy

**Attachments:**

1. District December 1, 2008 letter to Valor Academy
2. Signatures amounting to over 80 in-district "meaningfully interested" students



GREEN DOT PUBLIC SCHOOLS

December 29, 2008

Sent via Hand Delivery and E-mail

Ana T. Fernandez  
Charter Schools Division  
Los Angeles Unified School District  
333 S. Beaudry Ave.  
Los Angeles, CA 90012

Re: Proposition 39 Facilities Request

Dear Mr. McNair and Ms. Fernandez:

The Animo Westside Charter Middle School ("Charter School") is in receipt of your December 1, 2008 letter regarding our request for facilities for the 2009-10 school year. In that letter, the District objected to the supporting documentation verifying the projected number of in-district students meaningfully interested in attending the Charter School, citing "only 36 students were old enough to attend the 6<sup>th</sup> grade at Animo Westside Charter Middle School in the 2009-10 school year." This letter responds to those objections, as required under Section 11969.9(e) of the Proposition 39 Implementing Regulations, and asks that the District accept our original ADA projections of 171 students provided in our November 1, 2008 request for facilities.

The District has agreed to comply with the revised Proposition 39 regulations and is currently failing to do so. Under the new Proposition 39 regulations, the purpose of the District's December 1<sup>st</sup> correspondence was to express concerns with a charter school's ADA projections, not to reject the school's application at this time. The December 1<sup>st</sup> letter should have provided guidance on how to respond to the District's concerns with the school's Proposition 39 application. Our letter contained only an outright rejection with no guidance provided.

Additionally, the definition of meaningfully interested students was never previously stated by the District, nor has it been used in the past. By changing and narrowly defining meaningfully interested students after Proposition 39 applications had been submitted, the District has gone against the intent of the April 22nd, 2008 Settlement Agreement by and between the California Charter Schools Association (CCSA), Partnerships to Uplift Communities (PUG), Green Dot Public Schools (Green Dot) and the Los Angeles Unified School District. In the Settlement Agreement the District agreed to make a facility offer to any charter that submits a legally sufficient Proposition 39 application.

As you are aware, the revised Proposition 39 regulations require a school which is not yet open or which projects a "substantial increase" in in-district ADA to submit documentation of the number of students "meaningfully interested" in attending the school. The regulations do not specify or require a particular type of supporting documentation to be used. Indeed, schools may submit any type of supporting documentation which they used to arrive at their ADA projections. This documentation must be "sufficient for the district to determine the reasonableness of the projection, but

GREEN DOT PUBLIC SCHOOLS

... need not be verifiable for precise arithmetical accuracy." (Section 11969.9(c)(1)(C); emphasis added.) We object to the District's disproportionate reliance on parental signatures and age of students, the District's attempt to use that data to arrive at precise arithmetical accuracy, and the District's narrow and last minute change to the definition of meaningfully interested. The supporting documentation is intended *only* to demonstrate reasonableness of the request, not mathematical exactitude. Green Dot's Proposition 39 Application contained approximately 165 parent signatures of parents of meaningfully interested students, an affidavit signed by the CEO of Green Dot and documentation supporting Green Dot's track record of filling incoming classes and ADA projections for all 17 Green Dot schools. We remain confident with our projections and urge the District to accept our original ADA projections of 171 students provided in our November 1, 2008 request for facilities

We look forward to receiving from the District on or before February 1, 2009 your written preliminary proposal regarding the space the District allocates Charter School under Section 11969.9(f).

Sincerely,

Marco Petruzzi  
CEO, Green Dot Public Schools

Attachments:

1. District December 1, 2008 letter to Charter School.
2. Supporting Documentation: Parent signatures of meaningfully interested students. (Additional parent signature)
3. Copy of affidavit previously submitted.

Cc: Gregory L. McNair



**FOUNDING TEAM**

**Maika Borrego, MA**  
Lead Petitioner

**Pilar Luena, LCSW**  
Associate Executive Director  
of Social Services  
The Salvation Army  
Southern California Division

**Amber Carter, MA**  
Senior Finance Officer  
Community Redevelopment  
Agency of Los Angeles

**Eric Davis, JD**  
Attorney & Partner  
Davis & Lara LLP

**Jenai Emmel, MA**  
Educational Consultant

**Angela Fernandez, BS**  
Vice President  
Ketchum Public Relations

**Antonia Gonzalez, MA**  
Senior Project Manager  
Pacific Charter School  
Development

**Allie Matricardi, JD**  
Attorney  
Matricardi and Associates

**Kristina Olson, MA**  
Vice President  
Cenvento Marketing

**Breh Snyder, MBA**  
Founder  
CranioFiler.com

**Lynn Webster, MA**  
Teacher  
Los Angeles Unified School  
District

January 1, 2009

Sent via email, fax and US postal service

Gregory L. McNair  
Associate General Counsel II  
Charter Schools Division  
Los Angeles Unified School District  
333 S. Beaudry Ave.  
Los Angeles, CA 90012

Re: Proposition 39 Facilities Request

Dear Mr. McNair:

The Equitas Academy Charter School ("Equitas Academy") is in receipt of your December 1, 2008 letter regarding our request for facilities for the 2009-10 school year. In that letter, the District objected to the evidentiary support for our estimated ADA projection deeming Equitas Academy ineligible for facilities. This letter responds to those objections, as required under Section 11989.9(e) of the Proposition 39 Implementing Regulations, and asks the District to accept our original ADA projections provided in our November 1, 2008 request for facilities.

The District agreed to comply with the revised Proposition 39 regulations. Under the new Proposition 39 regulations, the purpose of the District's December 1<sup>st</sup> correspondence was to express concerns with a charter school's ADA projections, not to reject the school's application at this time. The December 1<sup>st</sup> letter should have provided guidance on how to respond to the District's concerns with our school's Proposition 39 application. Instead, our letter declared us ineligible with no guidance provided by the District.

The revised Proposition 39 regulations intend that the December 1<sup>st</sup> correspondence outline District concerns with schools' ADA projections, and then allows charter schools the opportunity to provide additional information in direct response to that December 1<sup>st</sup> letter. Schools must then reaffirm or modify their ADA projections in response to the District's concerns. In keeping with the new regulations, Equitas Academy is enclosing the following additional information and documentation to support its reaffirmed ADA projections with additional signatures from meaningfully interested parents.

As you are aware, the revised Proposition 39 regulations require a school which is not yet open or which projects a "substantial increase" in in-district ADA to submit documentation of the number of students "meaningfully interested" in attending the school. The regulations *do not* specify or require a particular type of supporting documentation to be used. Indeed, schools may submit any type of supporting documentation, which they used to arrive at their ADA projections. This documentation must be "sufficient for the district to determine the reasonableness of the projection, but ... *need not be verifiable for precise arithmetical accuracy.*" (Section 11989.9(c)(1)(C); emphasis added.) We object to the District's disproportionate reliance on parental signatures and the District's attempt to use that data to arrive at precise arithmetical accuracy. The supporting documentation is intended *only* to demonstrate reasonableness of the request, not mathematical

1927 E. Third Street • Long Beach, CA 90802 • 323.646.7624  
[mborrego@equitasacademy.org](mailto:mborrego@equitasacademy.org) • [www.equitasacademy.org](http://www.equitasacademy.org)

Page 1 of 2


exactitude. Our application actually indicates that we conservatively estimate that we will have 112 in-district ADA. We justified this projection based on the fact that we had already collected over 100 signatures and still have seven months to recruit students. In fact, the week after we submitted our application, we are receiving additional signatures.

I spoke with Ana Fernandez from the District on December 11, 2008. Ana Fernandez explained the District's accepted of 76 of our 102 signatures. She stated there were 80 kindergarten signatures and 21 first grade signatures. The District used ADA of 55 kindergarten students and then added the 21 first grade signatures to arrive at 76 eligible signatures. We contend that we are able to demonstrate our ability to enroll our projected ADA of 112 students, and have included additional first grade signatures to this letter as proof to meet our ADA projections.

We welcome any guidance from you about any documentation or information we may still provide to further respond to your concerns.

We look forward to receiving from the District on or before February 1, 2009 your written preliminary proposal regarding the space the District allocates Equitas Academy under Section 11969.9(f).

Sincerely,



Malka Borrego  
Lead Petitioner  
Equitas Academy Charter School

**Attachments:**

1. District December 1, 2008 letter to Equitas Academy Charter School
2. Affidavit signed by proposed Executive Director
3. Revised (as of 12/31/08) Spreadsheet of Meaningfully Interested Student Signatures
4. Signatures of meaningfully interested parents of 99 in-district students

cc: Jose Cole-Gutierrez  
Mary Shambra  
Ana Teresa Fernandez



# FUTURO PREP

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January 2, 2008

Sent Via Hand Delivery and Email

Gregory L. McNair  
Associate General Counsel II  
Charter Schools Division  
Los Angeles Unified School District  
333 S. Beaudry Ave.  
Los Angeles, CA 90012

Re: Proposition 39 Facilities Request

Dear Mr. McNair:

Futuro College Preparatory Elementary School ("Futuro Prep") is in receipt of your December 1, 2008 letter regarding our request for facilities for the 2009-10 school year. In that letter, the District denied our request for facilities on the grounds that "only 77 of the 84 students listed on the roster are eligible to attend Futuro Prep in the 2009-10 school year." This letter responds to those objections, and asks that the District accept the original ADA projections provided in our November 1, 2008 request for facilities ("November 1 Request").

More Than Eighty In-District Students Are Meaningfully Interested in Enrolling at Futuro Prep

It appears the District arrived at the number 77 under the assumption that no more than 55 kindergarten students would be eligible to enroll at Futuro Prep. If so, that is an incorrect assumption. The number 55 that was associated with our kindergarten class was our conservative estimate of our in-district ADA, not an enrollment cap. The ADA projection, which we conservatively estimated to be only 93% of the actual enrollment, is necessarily less than the number of students eligible to enroll. Because Futuro Prep's charter allows for a kindergarten enrollment of 66 students, all 59 in-district kindergarten students whose parents expressed interest in Futuro Prep and signed the interest form before November 1 are eligible to enroll. Those 59 kindergarten students combined with the 22 first grade students who expressed interest, total 81 in-district students who had expressed interest prior to our November 1 Request.

Projected Average Daily Attendance at Futuro Prep Exceeds the Eighty Unit Minimum

Education Code 47614(b)(4) states, "Facilities requests based upon projections of fewer than 80 units of average daily classroom attendance for the year may be denied by the school district." Our request exceeds this minimum. On pages 3 and 4 of our November 1 Request, we projected 122 units of average daily classroom attendance for the year including, as we believe permissible under this section, out-of-district students. However, even if the Education Code is interpreted to mean 80 units of *in-district* average daily classroom attendance, our projection of 113 in-district ADA still exceeds the 80 unit minimum.

The Number of Those "Meaningfully Interested" in Futuro Prep Continues to Increase

As you are aware, the revised Proposition 39 regulations require a school which is not yet open or which projects a "substantial increase" in in-district ADA to submit documentation of the number of students "meaningfully interested" in attending the school. The regulations *do not* specify or require a particular type of supporting documentation to be used. Indeed, schools may submit any type of supporting documentation which they used to arrive at their ADA projections. This documentation must be "sufficient for the district to determine the reasonableness of the projection, but ... *need not be verifiable for precise arithmetical accuracy.*" (Section 11969.9(c)(1)(C); emphasis added.) We object to the District's disproportionate reliance on parental signatures and wait list numbers and the District's attempt to use that data to arrive at precise arithmetical accuracy. The supporting documentation is intended *only* to demonstrate reasonableness of the request, not mathematical exactitude.

As we stated on page 5 of our November 1 Request, we continue to recruit students and are confident that we will reach our projected enrollment numbers before the school opens on August 17, 2009. We now have 94 signatures of meaningfully interested parents and have attached those signatures to this letter.

An accounting of the home schools these signatures represent and the corresponding ADA follows:

	Kindergarten Signatures	Projected Kindergarten In- District ADA	1st Grade Signatures	Projected 1 <sup>st</sup> Grade In- District ADA
1st Street	5	5	4	5
2nd Street	4	4	5	6
9th Street	3	3	0	2
49th Street	1	1	0	0
92nd Street	1	0	0	0
Amanecer	3	3	0	1
Breed Street	8	7	3	5
Bridge Street	2	2	2	2

Carthay Center	1	0	0	0
Clifford	1	1	0	0
Eastman	2	2	0	0
Elysian Heights	1	1	0	0
Euclid	6	5	8	9
Evergreen	0	0	0	3
Ford Blvd	1	1	0	0
Gardner	0	0	1	1
Hancock Park	0	0	1	1
Logan	1	1	0	0
Lorena	4	4	1	4
Malabar	4	4	0	3
Michel Torena	1	1	0	0
Murchison	2	2	2	2
Placencia	1	0	0	0
Rowan	10	9	1	4
Sheridan	1	1	1	3
Soto	1	1	0	1
Toland	1	0	0	0
Utah Street	0	0	0	3
<b>Total</b>	<b>65</b>	<b>58</b>	<b>29</b>	<b>55</b>

The number of in-district **kindergarten** students whose parents have signed the interest form is now **65**, all of whom could be enrolled in one of Futuro Prep's 66 spaces.

The number of in-district **first grade** students whose parents have signed the interest form is now **29**, all of whom could be enrolled in one of Futuro Prep's 66 spaces

<b>Projections for 2009-2010</b>	<b>Kindergarten</b>	<b>1<sup>st</sup> Grade</b>	<b>Total</b>
<b>Total Enrollment</b>	66	66	132
<b>Average Daily Attendance (ADA)</b>	61	61	122
<b>In-District Enrollment</b>	62	59	121
<b>In- District ADA</b>	58	55	113

#### Additional Documentation Further Supports Futuro Prep's Request

The revised Proposition 39 regulations intend that the December 1<sup>st</sup> correspondence outline District concerns with schools' ADA projections, and then allows charter schools the opportunity to provide additional information in direct response to that December 1<sup>st</sup> letter. Schools must then reaffirm or modify their ADA projections in response to the

District's concerns. In keeping with the new regulations, Futuro Prep is enclosing the following additional information and documentation to support modified ADA projections:

1. A revised (as of December 31, 2008) spreadsheet identifying meaningfully interested students by name, grade for 2009-2010, address, telephone number, home school, and parent who signed Futuro Prep's interest form.
2. Signatures of meaningfully interested parents of 94 in-district students eligible to enroll for the 2009-2010 school year.
3. A new affidavit signed by the proposed School Director affirming the number of families expressing meaningful interest in attending the school.

We welcome any guidance from you about any documentation or information we may still provide to further respond to your concerns.

We look forward to receiving from the District on or before February 1, 2009 your written preliminary proposal regarding the space the District will allocate Futuro Prep under Section 11969.9(f).

Sincerely,

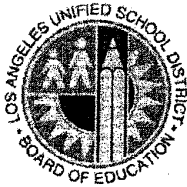
Edward Morris,  
Lead Petitioner and Proposed School Director

Attachments:

1. District December 1, 2008 letter to Futuro Prep
2. Revised (as of December 31, 2008) spreadsheet identifying meaningfully interested students
3. Signatures of meaningfully interested parents of 94 in-district students
4. Affidavit signed by the proposed School Director

cc: Jose Cole-Gutierrez  
Mary Shambra  
Ana Teresa Fernandez

# EXHIBIT J



*Los Angeles Unified School District*  
**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

Ramón C. Cortines  
Superintendent

José J. Cole-Gutiérrez  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Ari Engelberg  
Bright Star Secondary  
2636 Mansfield Ave.  
Los Angeles, CA 90016

**RE: Bright Star Secondary Request for Facilities under Education Code §47614**

Dear Charter School Operator,

The District has not yet been able to identify space to provide a preliminary offer based on your 2009-10 request for facilities under Education Code §47614 on behalf of Bright Star Secondary.

The District will continue to evaluate potentially available space and will make final offers on April 1, 2009.

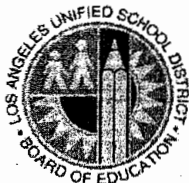
If you have any questions or concerns, please feel free to contact Ana Teresa Fernandez at (213) 241-5433 or via e-mail at [anateresa.fernandez@lausd.net](mailto:anateresa.fernandez@lausd.net). She is available to discuss next steps.

Sincerely,

A handwritten signature in black ink, appearing to read "José J. Cole-Gutiérrez".

José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*

**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

Ramón C. Cortines  
Superintendent

José J. Cole-Gutiérrez  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Michelle Jasso  
Endeavor College Preparatory Charter School  
544 North Marengo Avenue #2  
Pasadena, CA 91101

**RE: Endeavor College Preparatory Charter School Request for Facilities under Education Code §47614**

Dear Charter School Operator,

The District has not yet been able to identify space to provide a preliminary offer based on your 2009-10 request for facilities under Education Code §47614 on behalf of Endeavor College Preparatory Charter School.

The District will continue to evaluate potentially available space and will make final offers on April 1, 2009.

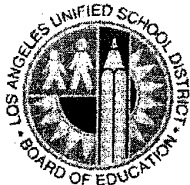
If you have any questions or concerns, please feel free to contact Ana Teresa Fernandez at (213) 241-5433 or via e-mail at [anateresa.fernandez@lausd.net](mailto:anateresa.fernandez@lausd.net). She is available to discuss next steps.

Sincerely,

A handwritten signature in black ink, appearing to read "José J. Cole-Gutiérrez".

José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*

**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

Ramón C. Cortines  
Superintendent

José J. Cole-Gutiérrez  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

John Lee  
Larchmont Charter School  
815 N. El Centro Avenue  
Los Angeles, CA 90038

**RE: Larchmont Charter School Request for Facilities under Education Code §47614**

Dear Charter School Operator,

The District has not yet been able to identify space to provide a preliminary offer based on your 2009-10 request for facilities under Education Code §47614 on behalf of Larchmont Charter School.

The District will continue to evaluate potentially available space and will make final offers on April 1, 2009.

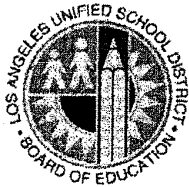
If you have any questions or concerns, please feel free to contact Ana Teresa Fernandez at (213) 241-5433 or via e-mail at [anateresa.fernandez@lausd.net](mailto:anateresa.fernandez@lausd.net). She is available to discuss next steps.

Sincerely,

A handwritten signature in black ink, appearing to read "Jose J. Cole-Gutierrez".

José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*  
**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

Ramón C. Cortines  
Superintendent

José J. Cole-Gutiérrez  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Hakki Karaman  
Magnolia Science Academy #3  
555 W. Redondo Beach Blvd, Ste. 100  
Gardena, CA 90249

**RE: Magnolia Science Academy #3 Request for Facilities under Education Code §47614**

Dear Charter School Operator,

The District has not yet been able to identify space to provide a preliminary offer based on your 2009-10 request for facilities under Education Code §47614 on behalf of Magnolia Science Academy #3.

The District will continue to evaluate potentially available space and will make final offers on April 1, 2009.

If you have any questions or concerns, please feel free to contact Ana Teresa Fernandez at (213) 241-5433 or via e-mail at [anateresa.fernandez@lausd.net](mailto:anateresa.fernandez@lausd.net). She is available to discuss next steps.

Sincerely,

José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*

**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

Ramón C. Cortines  
Superintendent

José J. Cole-Gutiérrez  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Giselle Acevedo  
Para Los Ninos Charter Middle School  
500 Lucas Avenue,  
Los Angeles, CA 90017

**RE: Para Los Ninos Charter Middle School Request for Facilities under Education Code §47614**

Dear Charter School Operator,

The District has not yet been able to identify space to provide a preliminary offer based on your 2009-10 request for facilities under Education Code §47614 on behalf of Para Los Ninos Charter Middle School.

The District will continue to evaluate potentially available space and will make final offers on April 1, 2009.

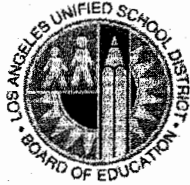
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Sincerely,

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José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*

**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

Ramón C. Cortines  
Superintendent

José J. Cole-Gutiérrez  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Ref Rodriguez  
CALS Early College High School  
111 North First Street, Suite 100  
Burbank, CA 91502

**RE: CALS Early College High School Request for Facilities under Education Code §47614**

Dear Charter School Operator,

The District has not yet been able to identify space to provide a preliminary offer based on your 2009-10 request for facilities under Education Code §47614 on behalf of CALS Early College High School.

The District will continue to evaluate potentially available space and will make final offers on April 1, 2009.

If you have any questions or concerns, please feel free to contact Ana Teresa Fernandez at (213) 241-5433 or via e-mail at [anateresa.fernandez@lausd.net](mailto:anateresa.fernandez@lausd.net). She is available to discuss next steps.

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José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*

**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

Ramón C. Cortines  
Superintendent

José J. Cole-Gutiérrez  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Ref Rodriguez  
Excel Charter Academy  
111 North First Street, Suite 100  
Burbank, CA 91502

**RE: Excel Charter Academy Request for Facilities under Education Code §47614**

Dear Charter School Operator,

The District has not yet been able to identify space to provide a preliminary offer based on your 2009-10 request for facilities under Education Code §47614 on behalf of Excel Charter Academy.

The District will continue to evaluate potentially available space and will make final offers on April 1, 2009.

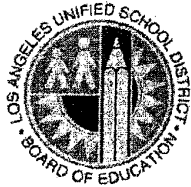
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José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*  
**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

**Ramón C. Cortines**  
Superintendent

**José J. Cole-Gutiérrez**  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

John Lee  
Larchmont Charter School- West Hollywood  
1265 N. Fairfax Ave.  
Los Angeles, CA 90046

**RE: Larchmont Charter School- West Hollywood Request for Facilities under Education Code §47614**

Dear Charter School Operator,

The District has not yet been able to identify space to provide a preliminary offer based on your 2009-10 request for facilities under Education Code §47614 on behalf of Larchmont Charter School- West Hollywood.

The District will continue to evaluate potentially available space and will make final offers on April 1, 2009.

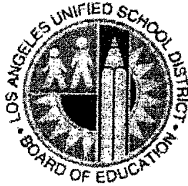
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Sincerely,

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José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*  
**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

Ramón C. Cortines  
Superintendent

José J. Cole-Gutiérrez  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Murat Biyik  
Magnolia Science Academy#5  
1530 N Wilton Pl  
Hollywood, CA 90028

**RE: Magnolia Science Academy#5 Request for Facilities under Education Code §47614**

Dear Charter School Operator,

The District has not yet been able to identify space to provide a preliminary offer based on your 2009-10 request for facilities under Education Code §47614 on behalf of Magnolia Science Academy#5.

The District will continue to evaluate potentially available space and will make final offers on April 1, 2009.

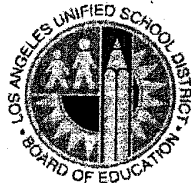
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Sincerely,

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José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*

**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

Ramón C. Cortines  
Superintendent

José J. Cole-Gutiérrez  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Ref Rodriguez  
Triumph Charter Academy  
111 North First Street, Suite 100  
Burbank, CA 91502

**RE: Triumph Charter Academy Request for Facilities under Education Code §47614**

Dear Charter School Operator,

The District has not yet been able to identify space to provide a preliminary offer based on your 2009-10 request for facilities under Education Code §47614 on behalf of Triumph Charter Academy.

The District will continue to evaluate potentially available space and will make final offers on April 1, 2009.

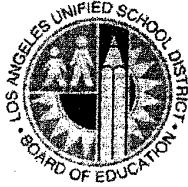
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Sincerely,

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José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*

**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

**Ramón C. Cortines**  
Superintendent

**José J. Cole-Gutiérrez**  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Patricia D. Smith  
Crenshaw Arts/Tech Charter High School, C.A.T.C.H.  
2941 W. 70th Street  
Los Angeles, CA 90043

**RE: Crenshaw Arts/Tech Charter High School, C.A.T.C.H. Request for Facilities under Education Code §47614**

Dear Charter School Operator,

The District has not yet been able to identify space to provide a preliminary offer based on your 2009-10 request for facilities under Education Code §47614 on behalf of Crenshaw Arts/Tech Charter High School, C.A.T.C.H..

The District will continue to evaluate potentially available space and will make final offers on April 1, 2009.

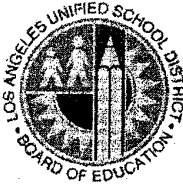
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José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*  
**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

Ramón C. Cortines  
Superintendent

José J. Cole-Gutiérrez  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Arielle Rittvo  
KIPP Academy of Opportunity  
445 S. Figueroa Ave., Suite 2580  
Los Angeles, CA 90071

**RE: KIPP Academy of Opportunity Request for Facilities under Education Code §47614**

Dear Charter School Operator,

The District has not yet been able to identify space to provide a preliminary offer based on your 2009-10 request for facilities under Education Code §47614 on behalf of KIPP Academy of Opportunity.

The District will continue to evaluate potentially available space and will make final offers on April 1, 2009.

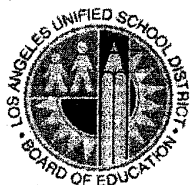
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José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*

**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

**Ramón C. Cortines**  
Superintendent

**José J. Cole-Gutiérrez**  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Ref Rodriguez  
Milagro Charter School  
111 North First Street, Suite 100  
Burbank, CA 91502

**RE: Milagro Charter School Request for Facilities under Education Code §47614**

Dear Charter School Operator,

The District has not yet been able to identify space to provide a preliminary offer based on your 2009-10 request for facilities under Education Code §47614 on behalf of Milagro Charter School.

The District will continue to evaluate potentially available space and will make final offers on April 1, 2009.

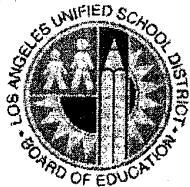
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Sincerely,

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José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*

**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

**Ramón C. Cortines**  
Superintendent

**José J. Cole-Gutiérrez**  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Vielka McFarlene  
Celerity Dyad Charter School  
3417 W. Jefferson Blvd.  
Los Angeles, CA 90018

**RE: Celerity Dyad Charter School Request for Facilities under Education Code §47614**

Dear Charter School Operator,

The District has not yet been able to identify space to provide a preliminary offer based on your 2009-10 request for facilities under Education Code §47614 on behalf of Celerity Dyad Charter School.

The District will continue to evaluate potentially available space and will make final offers on April 1, 2009.

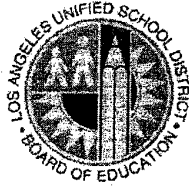
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José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*

**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

**Ramón C. Cortines**  
Superintendent

**José J. Cole-Gutiérrez**  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Kevin Bechtel  
KIPP Raices  
4545 Dozier Avenue  
Los Angeles, CA 90022

**RE: KIPP Raices Request for Facilities under Education Code §47614**

Dear Charter School Operator,

The District has not yet been able to identify space to provide a preliminary offer based on your 2009-10 request for facilities under Education Code §47614 on behalf of KIPP Raices.

The District will continue to evaluate potentially available space and will make final offers on April 1, 2009.

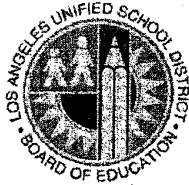
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Sincerely,

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José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*  
**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

Ramón C. Cortines  
Superintendent

José J. Cole-Gutiérrez  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Sabrina L. Bow  
Los Angeles Academy of Arts & Enterprise  
600 S. La Fayette Park Place, 1st Floor  
Los Angeles, CA 90057.

**RE: Los Angeles Academy of Arts & Enterprise Request for Facilities under Education Code §47614**

Dear Charter School Operator,

The District has not yet been able to identify space to provide a preliminary offer based on your 2009-10 request for facilities under Education Code §47614 on behalf of Los Angeles Academy of Arts & Enterprise.

The District will continue to evaluate potentially available space and will make final offers on April 1, 2009.

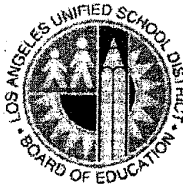
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José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair



*Los Angeles Unified School District*  
**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

**Ramón C. Cortines**  
Superintendent

**José J. Cole-Gutiérrez**  
Executive Director

January 30, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Nick A. Vasquez  
Monsenor Oscar Romero Charter School  
634 S. Spring Street, #818  
Los Angeles, CA 90014

**RE: Monsenor Oscar Romero Charter School Request for Facilities under Education Code §47614**

Dear Charter School Operator,

The District has not yet been able to identify space to provide a preliminary offer based on your 2009-10 request for facilities under Education Code §47614 on behalf of Monsenor Oscar Romero Charter School.

The District will continue to evaluate potentially available space and will make final offers on April 1, 2009.

If you have any questions or concerns, please feel free to contact Ana Teresa Fernandez at (213) 241-5433 or via e-mail at [anateresa.fernandez@lausd.net](mailto:anateresa.fernandez@lausd.net). She is available to discuss next steps.

Sincerely,

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José J. Cole-Gutiérrez  
Executive Director

c: Ana Teresa Fernandez  
Gregory McNair

# EXHIBIT K



LAW OFFICES OF MIDDLETON, YOUNG & MINNEY, LLP

FEBRUARY 27, 2009

VIA: E-MAIL, FACSIMILE AND FIRST  
CLASS MAIL

PAUL C. MINNEY  
JAMES E. YOUNG  
MICHAEL S. MIDDLETON  
LISA A. CORR  
AMANDA J. MCKECHNIE  
JESSICA ADAMS ROBINSON  
JERRY W. SIMMONS  
CHASTIN H. PIERMAN  
JULIE D. ROBBINS  
JAMES L. SHEA  
KIMBERLY RODRIGUEZ  
ANDREA C. SEXTON  
SARAH J. KOLLMAN  
JANELLE A. RILEY  
AMY L. ROBERTS  
ANDREW G. MINNEY  
  
OF COUNSEL  
SUZANNE A. TOLLEFSON

Jose Cole-Gutiérrez  
Executive Director  
Charter Schools Division  
LOS ANGELES UNIFIED SCHOOL DISTRICT  
333 S. Beaudry Ave. 20<sup>th</sup> Floor  
Los Angeles, CA 90012

*Re: New West Charter School  
Response to District's Proposition 39 Preliminary Offer*

2009 MAR -3 AM 8:19  
CHARTER SCHOOLS DIVISION  
LAUSD

Dear Mr. Cole-Gutiérrez:

Our office is in receipt of the Los Angeles Unified School District's ("District") Preliminary Offer of facilities pursuant to Proposition 39, made to New West Charter School ("Charter School") and dated January 31, 2009. The District's Preliminary Offer is for fourteen classrooms, one office room, and shared use of "teaching stations" and "all common areas including the library, computer lab, auditorium/multi-purpose room, playfields and athletic areas" at 98<sup>th</sup> Street Elementary School, and is based on an in-District Average Daily Attendance ("ADA") projection of 375 students.

While the Charter School appreciates the efforts of District staff in an attempt to reach workable facilities solutions that balance the needs of all students, including those in charter schools, please be aware that the Charter School has identified serious procedural as well as substantive legal deficiencies in the District's Offer. Full compliance with Proposition 39 and the State Board of Education Implementing Regulations obligate the District to allocate twenty-three (23) regular non-shared use classrooms, as well as a reasonably equivalent allocation of the specialized space and non-teaching space on a reasonably equivalent and contiguous District site.

Jose Cole-Gutierrez  
Re: New West Charter School  
Response to Preliminary Offer  
February 27, 2009  
Page 2 of 14

**CHARTER SCHOOL AND DISTRICT STUDENTS ARE SUPPOSED TO BE TREATED EQUALLY WHEN IT COMES THE ALLOCATION OF FACILITIES BETWEEN THEM**

In allocating the Charter School fourteen classrooms to serve over 500 in-District students, on a crowded and shared District campus, the District has violated the basic premise of Proposition 39: that public school facilities be shared equally and fairly among all public school students.

Specifically, the California Court of Appeal has made clear that in meeting their Proposition 39 obligation, "[a school district shall] give the same degree of consideration to the needs of charter school students as it does to the students in district-run schools." *Ridgecrest Charter School v. Sierra Sands Unified School District*, 130 Cal.App.4th 986 (2005). The court noted that in handling Proposition 39 facilities issues, a school district's actions "must comport with the evident purpose of the act to equalize the treatment of charter and district run-schools with respect to the allocation of space between them" and must "demonstrate a rational connection between those factors, the choice made, and the purposes of [Proposition 39]." In response to the school district's position in the *Ridgecrest* case that it did not have to disrupt its own programs to meet its Proposition 39 obligation, the court clearly responded that the school district was operating with a faulty premise and that the court had little doubt that accommodating the charter school would cause some, if not considerable, disruption and dislocation among the district students, staff, and programs.

The District is well aware of this requirement: the Los Angeles Superior Court reiterated the requirements in great detail in its recent opinion ruling against the District and finding for the Charter School that the District had violated its responsibilities under Proposition 39 for the 2008-2009 school year. Needless to say, it is disappointing to see that rather than make an effort to comply with its statutory obligation, the District has instead chosen to again allocate a facility that is in no way reasonably equivalent or able to accommodate the projected enrollment of the Charter School.

**THE DISTRICT HAS FAILED TO ALLOCATE A REASONABLY EQUIVALENT FACILITY TO THE CHARTER SCHOOL**

**THE DISTRICT HAS FAILED TO PROPERLY IDENTIFY THE COMPARISON SCHOOLS**

The Implementing Regulations provide a five-step analysis by which a school district must determine whether a facility is reasonably equivalent to those in which the students would be accommodated if they were attending public schools of the school district. First, pursuant to 5 CCR Section 11969.3(a), the District must identify a comparison group of district-operated schools with similar grade levels to the Charter School.

5 CCR Section 11969.3(a) defines the process for identifying comparison schools as follows:

MYM

"The comparison group shall be the school district-operated schools with similar grade levels that serve students living in the high school attendance area...in which the largest number of students of the charter school reside. The number of charter school students residing in a high school attendance area shall be determined using in-district classroom ADA projected for the fiscal year for which facilities are requested."

The District's Preliminary Offer identifies the comparison schools as Emerson Middle School, Webster Middle School, and Palms Middle School, and states that these schools were chosen based on the Charter School's enrollment documentation "demonstrating which LAUSD schools the majority of New West's Charter Middle School students would otherwise attend."

However, the Charter School's Proposition 39 request identifies Emerson Middle School, Mark Twain Middle School, and Palms Middle School as the District-operated schools that serve students living in the high school attendance area (University Senior High School) in which the largest number of students of the charter school reside.

Furthermore, the District's Preliminary Offer only identifies the comparison schools; it does not contain a "description" of the comparison schools, or the detailed methodology for how they were identified, though it does identify them. This failure to provide a description of the comparison schools is especially egregious because the condition of the facilities at the comparison schools is better. For example, in recent years Emerson has seen their plumbing and electrical systems retooled, their auditorium renovated, their classrooms painted, their hot and cold water systems replaced, and their roof repaired. Mark Twain has seen their plumbing and electrical systems retooled, science labs renovated, their classrooms painted, and their roof replaced. Palms has seen their plumbing and electrical systems retooled, library renovated, classrooms painted, classroom floors replaced, and roof replaced.

Therefore, the District's Preliminary Offer violates 5 CCR Section 11969.3(a) and the comparison schools for purposes of allocating Proposition 39 facilities are Emerson Middle School, Mark Twain Middle School, and Palms Middle School.

#### THE DISTRICT HAS USED THE INCORRECT PROJECTED ADA

As you are aware, Proposition 39 and the State Board of Education Implementing Regulations require the Charter School to provide the District with a "reasonable" projection of in-District ADA for the school year in which facilities are requested. 5 CCR 11969.9(b). This projection must be submitted to the District on or before November 1 of the fiscal year preceding the year for which facilities are requested. *Id.* In reviewing this obligation the California Court of Appeals stated in Sequoia Union High School District v. Aurora Charter High School (112 Cal.App.4<sup>th</sup> 185, 196) that: "by modifying 'projection' with the adjective 'reasonable' the statute necessarily implies the charter school must offer some explanation in its facilities request for the basis of its projection. However, the statute does not require the school to demonstrate arithmetical precision in its projection or provide the kind of documentary or testimonial evidence that would be admissible at trial. Rather, the school is subsequently penalized if its projection was incorrect by having to reimburse the district for overallocated space."

MYM

Jose Cole-Gutierrez  
Re: New West Charter School  
Response to Preliminary Offer  
February 27, 2009  
Page 4 of 14

In its Proposition 39 request, the Charter School projected an in-District ADA of 504.41 in-District students. The Charter School also supported its projection with voluminous documentation, including an Affidavit of Enrollment and Meaningfully Interested Students, Intent to Enroll and Re-Enroll forms for the 2009-10 school year, copies of the Charter Schools waitlist for the years 2003-2004 through 2007-08, P-2 ADA reports for the years 2003-2004 through 2007-08, 2008-09 CBEDS data, a current year roster, and 2007-2008 Open House Attendance/Application Package Sign-out sheets indicating the level of parent interest. This kind of documentation is far above that which is required by 11969.9(c)(1)(C) and the Court in *Environmental Charter High School v. Centinela Valley Union High School Dist.*, 122 Cal. App. 4th 139, 152 (Cal. Ct. App. 2004), which only required the number of currently enrolled students, the number of currently enrolled students who intend to re-enroll, the number of anticipated new students, and the historical retention rates.

The District responded by letter dated December 1, 2008, objecting to the Charter School's projections based only on a cursory review of the Charter School's Intent to Enroll forms and "historical enrollment information," and reducing the Charter School's projected enrollment to 316 ADA. By letter dated December 19, 2008, the Charter School clearly refuted the District's allegations, responding in part that the Intent to Enroll forms show a high level of in-District enrollment for the 2009-2010 school year, and the historical enrollment information provided by the Charter School shows significant growth in the Charter School's enrollment each year.

The Charter School would remind the District that the new Proposition 39 Final Statement of Reasons, adopted by the State Board of Education, notes that the purpose of the Preliminary Proposal and the Charter School's opportunity to respond, is "to ensure that preliminary proposal ties back to the original facilities request, thereby forming the basis for dialogue and negotiation prior to issuance of the final notification, and to ensure that the charter school addresses differences between the preliminary proposal and its original submission." The District has not provided any substantiated evidence that the Charter School's enrollment projections are inaccurate, and the Charter School has provided voluminous amounts of evidence to show its projections are reasonable and accurate. Furthermore, as the District is aware both from its ongoing litigation with the Charter School and from the documents submitted with the original Proposition 39 request, the Charter School is one of the highest performing charter schools in the District. The Charter School has had substantial waiting lists (usually for double or triple their enrollment) for years and substantial pressure from parents and the community to grow. In other words, the Charter School could easily double its current enrollment if the District complied with Proposition 39 and allocated reasonably equivalent facilities sufficient to accommodate all students who desire to enroll. Given this, the District may not take any action to impede the growth of the Charter School, yet the District's Preliminary Offer does exactly that by allocating insufficient facilities and reducing the Charter School's enrollment projections with no demonstrated basis for doing so.

Therefore, pursuant to 5 CCR Section the District must allocate facilities to the Charter School based on an ADA projection of 504.41 students.

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THE DISTRICT HAS FAILED TO PROPERLY ALLOCATE SUFFICIENT TEACHING STATIONS TO THE CHARTER SCHOOL

All California public school students are entitled to learn in a classroom that is safe, that is not crowded with too many students, and that is conducive to a supportive learning environment. In accordance with the implementing regulations, the second step is for the District to provide a facility to the Charter School with the same ratio of teaching stations to average daily attendance ("ADA") as those provided to students in the comparison group of schools, as well as a proportionate share of specialized classroom space and non-teaching space. 5 CCR Section 11969.3(b)(1). There is no such thing as a fractional classroom for a single grade level of students and the allocation cannot be based upon the District's "loading standard," nor can it be based on an arbitrary and fabricated formula.

The District has offered fourteen classrooms on a shared campus. This allocation is insufficient to accommodate the Charter School's projected ADA of 504.41 students in conditions reasonably equivalent to those enjoyed by District students. Therefore, the District's Preliminary Offer violates 5 CCR Section 11969.3(b).

As stated above, Proposition 39 requires that "[f]acilities made available by a school district to a charter school shall be provided in the same ratio of teaching stations (classrooms) to ADA as those provided to students in the school district attending comparison group schools." 5 CCR Section 11969.3(b)(1). It also requires that "[e]ach school district shall make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-District students in *conditions* reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district" Education Code Section 47614 (emphasis added). The analysis requires the District to actually count the number of teaching stations (in use and those not in use) at each comparison school and divide that by the ADA at each school site and determine the number of teaching stations per ADA – please note that this is not the same as the District loading standard (i.e., the number of students the District places in each classroom) and will normally result in ADA to teaching stations ratios that are below the District's loading standard.

The District's preliminary allocation was fourteen classrooms for 316 students, for a ratio of 22.6:1. The Charter School would therefore estimate that it is entitled to twenty-three (23) regular, non-specialized teaching stations in order to accommodate its 504.41 in-District students in reasonably equivalent facilities. However, this number of teaching stations may be higher once the Charter School is able to determine the number of actual teaching stations at the site from the information the District will provide in response to our Public Records Act request.

The District's offer fails to provide sufficient standard classroom space to the Charter School and violates 5 CCR Section 11969.3(b) and needs to be revised to provide a total allocation of twenty-three (23) regular teaching stations on a contiguous campus.

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**THE DISTRICT HAS FAILED TO PROPERLY ALLOCATE SUFFICIENT SPECIALIZED CLASSROOM SPACE TO THE CHARTER SCHOOL**

The third step requires that, if a school district includes specialized classroom space, such as science laboratories, in its classroom inventory, the Proposition 39 offer of facilities provided to a charter school shall include a share of the specialized classroom space. 5 CCR Section 11969.3(b)(2). The Preliminary Offer must include "a share of the specialized classroom space and/or a provision for access to reasonably equivalent specialized classroom space," and "the amount of specialized classroom space allocated and/or the access to specialized classroom space provided shall be determined based on three factors:

1. The grade levels of the charter school's in-district students;
2. The charter school's total in-district classroom ADA; and
3. The per-student amount of specialized classroom space in the comparison group schools.

5 CCR Section 11969.3(b)(3) and Section 11969.9(f) and (h)(1).

As such, the District must allocate specialized classroom space, such as science laboratories, art rooms, computer rooms, music rooms, wood/metal shop rooms, etc. commensurate with the in-District classroom ADA of the Charter School.

**No Specific Allocation of specialized classroom space is included in the District's Preliminary Offer in direct violation of 5 CCR Section 11969.3(b)(3) and Section 11969.9(f) and (h)(1).**

As noted above, specialized classroom space is not just science labs and computer labs. It is any teaching space that is not a traditional teaching station, including music and art rooms, computer labs, science labs, and resource rooms. The District's Preliminary Offer provides none of this specialized space to the Charter School.

Specifically, Palms Middle School students have access to at least one computer labs, a science lab, and a music room. Emerson Middle School and Mark Twain Middle School do not provide the necessary information on their SARC or on their websites, so a similar determination cannot be made for them. However, the required course schedule for middle school students in the District would require at least one computer labs, a science lab, and an art/music room on each campus.

Charter School students are entitled to space in which they can express themselves artistically or musically, explore technology, have access to a resource center, or be given the opportunity to study the worlds of science through hands-on exploration. Given the specialized classroom spaces the students in the comparison schools enjoy, the lack of any allocation of specialized space in the District's Preliminary Offer is not reasonably equivalent and violates the Implementing Regulations.

The Proposition 39 law and its implementing regulations state that Charter School students are entitled to receive an offer of specialized space comparable to what students at the comparison schools enjoy. Therefore, the District's Preliminary Offer violates 5 CCR Section 11969.3(b)(3) and section 11969.9(f) and (h)(1), and must be revised to provide for reasonably equivalent access to each kind of specialized space discussed above, in the form of equal access or shared use.

THE DISTRICT HAS FAILED TO PROPERLY ALLOCATE SUFFICIENT NON-TEACHING SPACE TO THE CHARTER SCHOOL

In addition to teaching station and specialized classroom space, the fourth step requires the District to provide non-teaching station space commensurate with the in-District classroom ADA of the Charter School and the per-student amount of non-teaching station space in the comparison group schools. 5 CCR Section 11969.3(b)(3). Non-teaching space is all of the remainder of space at the comparison school that is not identified as teaching station space or specialized space and includes, but is not limited to, administrative space, a kitchen/cafe/tertia, a multi-purpose room, a library, a staff lounge, a copy room, storage space, bathrooms, a parent meeting room, special education space, RSP space, and play area/athletic space, including gymnasiums, athletic fields, locker rooms, and tennis courts. 5 CCR Section 11969.3(b)(3). An allocation of non-teaching station space can be accomplished through shared use or exclusive use.

The District's offer does not specifically allocate any non-teaching space to the Charter School, again stating that any sharing arrangements are "TBD between Stella Middle School and New West Charter School as the co-location arrangements are developed," without any additional information. However, the comparison schools have significant non-teaching space that the District has failed to allocate to or share with the Charter School in its Preliminary Offer. Specifically, a preliminary review of public information reveals that the students at Emerson Middle School, Mark Twain Middle School, and Palms Middle School enjoy libraries, gymnasiums, outdoor recreational space, including blacktop basketball courts, locker rooms, kitchens, cafeterias/multipurpose rooms, administrative offices, teacher workrooms, psychologist and counselor offices, conference rooms, supply storage areas, and RSP and special education offices.

The Proposition 39 law and its implementing regulations state that Charter School students are entitled to a share of these non-teaching facilities, commensurate with its in-District ADA. 5 CCR Section 11969.3(b)(3). A reasonably equivalent facility would offer the Charter School students a place on a contiguous campus to enjoy a variety of physical activities, a place to study, with access to reference materials, a place to privately consult with counselors and strategize about how to get into a college-preparatory high school, and a place to receive specialized RSP services. A reasonably equivalent facility would also provide as a quiet lounge area for teachers to grade papers and copy assignments, space for the Charter School to store its supplies and files out of the way, and a place for administrators to perform their assigned duties and meet privately with employees, parents, or students.



Yet the District's offer fails to account for any of this space, nor does it address at all how the Charter School will share space with Stella Middle Charter Academy.

Because the District has failed to specify what non-teaching space it is intending to share with the Charter School, the District's offer violates 5 CCR Section 11969.3(b)(3), and section 11969.9(f) and (h)(1). To remedy this violation, the District should allocate contiguous facilities to the Charter School, including shared specialized and non-classroom space, on a District campus near where the Charter School wishes to be located. In order to provide a proper allocation of specialized and non-teaching station space the District should analyze the per square foot amounts of these types of space that are offered in-Districts students in the comparison schools and provide this allocation of space on a per-ADA basis to the Charter School.

**THE CONDITION OF FACILITIES ALLOCATED BY THE DISTRICT IS NOT REASONABLY EQUIVALENT TO THE CONDITION OF THE COMPARISON SCHOOLS**

The last step in the process to determine whether a facility is reasonably equivalent to the District's comparison schools is for the District to determine whether the condition of facilities provided to a charter school is reasonably equivalent to the condition of comparison group schools. Pursuant to 5 CCR Section 11969.3(c), the District must assess "such factors as age (from latest modernization), quality of materials, and state of maintenance." The District must also assess the following factors:

1. School site size.
2. The condition of interior and exterior surfaces.
3. The condition of mechanical, plumbing, electrical, and fire alarm systems, including conformity to applicable codes.
4. The availability and condition of technology infrastructure.
5. The condition of the facility as a safe learning environment including, but not limited to, the suitability of lighting, noise mitigation, and size for intended use.
6. The condition of the facility's furnishings and equipment.
7. The condition of athletic fields and/or play area space.

The District did not perform this analysis in its Preliminary Offer, and thus has violated 5 CCR Section 11969.3(c). The Charter School will be submitting a Public Records Act request to the District to allow it to perform this analysis and determine whether the facility at 98<sup>th</sup> Street Elementary is reasonably equivalent to the comparison group of schools.

**THE DISTRICT HAS NOT MADE A REASONABLE EFFORT TO LOCATE THE CHARTER SCHOOL WHERE IT REQUESTED TO BE LOCATED.**

Education Code Section 47614 requires that a district shall make reasonable efforts to provide a charter school with facilities near to where the charter school wishes to locate. "Reasonable efforts" is not defined in the law or Implementing Regulations. However, in *Ridgecrest* the Court noted that according to the California Department of Education, the



Implementing Regulations "specifically do[] not provide any guidance" about what constitute such reasonable efforts, because "the statutory language provides a balance between favoring charter school students and favoring students in district-operated programs. In addition, referring to the requirement – in the regulation's definition of "contiguous" – that a district 'shall minimize the number of sites assigned' if it cannot accommodate a charter school at a single site, the Department explained it had rejected, as 'unnecessary and redundant,' a suggestion the regulation be drafted to require merely that a district make "every effort to minimize" the number of sites." However, the dictionary defines "reasonable" as "governed by or being in accordance with reason or sound thinking." *Ridgecrest Charter School v. Sierra Sands School District* (130 Cal. App. 4th 986 (2005)). Therefore, reasonable efforts would logically require the District to consider all facilities encompassed by the Charter School's request, to analyze data to make a reliable determination, and to conduct a thorough investigation into the different requested and available options.

In its Proposition 39 request letter, dated October 30, 2008, the Charter School requested that it be placed at Daniel Webster Middle School, Ralph Waldo Emerson Middle School, or Richland Elementary School, and that its facility be located within a two mile radius of 11625 Pico Boulevard on the Westside of Los Angeles.

Yet the site proposed by the District, 98<sup>th</sup> Street Elementary School, is located more than **8 miles away** – on the 405 Freeway – from where the Charter School indicated it wished to be located and far from where many of its future students reside. Furthermore, there is no evidence in the record, the Preliminary Offer, or anywhere else to demonstrate that the District made any effort, let alone a reasonable effort, to place the Charter School where it wishes to be located. There is no evidence that alternative sites were considered, that the District conducted any investigation of the feasibility of placing the Charter School on the Daniel Webster Middle School, Ralph Waldo Emerson Middle School, or Richland Middle School sites, or that the District discussed alternative allocations with the Charter School. The District's failure to conduct this investigation is confirmed because both Webster and Emerson have the capacity to accommodate the Charter School on their campus. Webster's 2007-2008 enrollment was 914 students, and the campus capacity is 1444 – this leaves 530 spaces on the site, more than enough to accommodate the Charter School's 504.41 ADA. Emerson's 2007-2008 enrollment was 1184 students, and the campus capacity is 1502 – with 318 spaces, the District should certainly have considered placing the Charter School on the Emerson campus, moving a small percentage of Emerson's students to another District site.

The District should have considered these two sites with sufficient capacity – especially since the District is also required to reorganize its current class configurations to accommodate the needs of the Charter School: in the *Ridgecrest* decision, the court noted that "accommodating a charter school might involve moving district-operated programs or changing attendance areas" and that "providing a contiguous school facility to a charter school might require disruption and dislocation among district students, staff and programs." Moreover, while Proposition 39 provides that the District is not required to use general fund monies to meet its obligations under the initiative the District is required to use restricted sources of monies (e.g., bond monies, parcel taxes etc.). There is no evidence that the District has reviewed meeting its obligations under the



law by using these additional sources of funds. Instead, it appears that the District has again simply tried to determine where it might have excess seats and made a determination (without moving any existing classrooms or programs) that it cannot house a certain number of in-District students attending charter schools and offer the remaining seats to charter schools regardless of their obligations to determine the comparison group, the proper capacity, the reasonably equivalent condition, the proper allocation, and without making any effort to place the charter school where they wish to be located etc. Therefore, the District's Preliminary Offer violates Education Code Section 47614.

#### **THE DISTRICT HAS INCORRECTLY CALCULATED THE PRO RATA SHARE**

As the District is aware, the Proposition 39 Implementing Regulations set forth the detailed methodology for calculating the pro rata share, which is defined as "a per-square-foot amount equal to those school district facilities costs that the school district pays for with unrestricted revenues from the district's general fund, as defined in sections 11969.2(f) and (g) and hereinafter referred to as "unrestricted general fund revenues," divided by the total space of the school district times (2) the amount of space allocated by the school district to the charter school." 5 CCR Section 11969.7.

5 CCR Section 11969.7 provides that "facilities costs includes: (1) contributions from unrestricted general fund revenues to the school district's Ongoing and Major Maintenance Account (Education Code section 17070.75), Routine Restricted Maintenance Account (Education Code section 17014), and/or deferred maintenance fund; (2) costs paid from unrestricted general fund revenues for projects eligible for funding but not funded from the deferred maintenance fund; (3) costs paid from unrestricted general fund revenue for replacement of facilities-related furnishings and equipment, that have not been included in paragraphs (1) and (2), according to school district schedules and practices"; and (4) debt service costs. Facilities costs "do not include any costs that are paid by the charter school, including, but not limited to, costs associated with ongoing operations and maintenance and the costs of any tangible items adjusted in keeping with a customary depreciation schedule for each item." Moreover, the regulations provide that the charter school shall be responsible for the routine repair and maintenance of the facility allocated and that the school district retains the obligation to provide the deferred maintenance on the school facility. (5 CCR 11969.4). Consequently, the pro rata share must not include any costs for the routine repair and maintenance of the facility – as these costs are costs assumed by the charter school.

The pro rata share is then calculated by dividing actual facilities costs in the year preceding the fiscal year in which facilities are provided and the largest amount of total space of the school district at any time during the year preceding the fiscal year in which facilities are provided.

The District's Preliminary Offer includes a spreadsheet detailing the District's pro rata share calculation of \$7.62 per square foot. This quoted pro rata share is not properly calculated pursuant to 5 CCR Sections 11969.4 and 11969.7. As noted above, the implementing regulations provides that ongoing operations and maintenance of facilities ("M&O") are the responsibility of



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the Charter School (5 CCR Section 11969.4(b)) and that any costs assumed by the Charter School cannot be included in the pro rata share calculation. The pro rata share and the draft facilities use agreement seek to mandate that the District perform M&O services without the authorization or consent of the Charter School. Even more egregious is the District's proposal to charge the Charter School for these services, not just once, but *twice*. These services, such as custodial, gardening, pest, and landscaping services, are included in the District's facilities cost calculation. The District then apparently seeks to "double dip" by charging the Charter School on a fee-for-service basis for M&O costs. (FUA, Sections 11.6 and 11.7.) The Charter School does not agree that the District will perform M&O services, thus these costs must be removed from the pro rata share calculation and the Facilities Use Agreement must be amended to reflect that the Charter School will perform ongoing operations and maintenance in compliance with District policies, unless actual school district practice differs from official policies.

Because the District's facilities costs include costs that are paid by the Charter School, "including costs associated with ongoing operations and maintenance," (5 CCR Section 11969.7.) the costs for building and grounds, custodial services and landscaping and gardening services should be removed from the District's pro rata share calculation. Should the Charter School request such services from the District, the Charter School will pay for such services on a fee-for-service basis as contemplated by the FUA.

In addition, we are informed that the District's police services will not come out to charter schools in the District, including the Charter School. Pro rata share amounts are intended to reflect a charter school's portion of the District's facilities costs that the charter school uses. Moreover, it is not likely that School Police Services should be included as a facilities cost, because it does not directly relate to the safety of the "physical plant" under 5 CCR Section 11969.2. Because the Charter School does not use the District's police service, the inclusion of these costs in the pro rata share calculation is not appropriate.

The District also appears to have included utilities costs in its calculation. Not only does the Charter School pay for the utilities it uses on the site, but these amounts should be separately metered and billed to the Charter School. It is not appropriate nor provided for in the law to include these costs in the pro rata share calculation.

The District's calculation also includes line items for "Office of Environmental Health and Safety" and "Insurance." Currently the Charter School is not aware of any benefits or services it receives from these categories. For example, the Charter School provides and pays for the full spectrum of its insurance benefits, as required by its charter. Moreover, insurance is not contemplated under the Prop. 39 regulations as an acceptable "facilities cost." Consequently these costs should be removed as well.

Please provide a revised pro rata share calculation consistent with this letter. In our estimate the pro rata share should be no more than \$.19 per square foot (and only include Debt Service – assuming that the debt service payments are for facilities).



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Lastly, the Proposition 39 regulations require preliminary proposals to include the charter schools' projected pro rata dollar amount, not solely the district's per-square-foot facilities cost calculation. We would be happy to collaborate with you in determining the total square footage being offered to the Charter School, including the total square footage of shared space based upon the percentage of the Charter School's use of such shared space.

#### **DEDUCTION OF CHARGES RELATED TO THE CHARTER SCHOOL'S OCCUPANCY OF THE SPACE**

The District's Preliminary Offer states that "Any charges related to the charter school's occupancy of the space will be deducted from charter school's revenue account (e.g. AB 602 and in lieu of property tax funds) in 10 equal monthly payments beginning with the August revenue to be paid in late August or early September."

This automatic offset runs contrary to the form Facilities Use Agreement ("FUA") negotiated by the District and the California Charter Schools Association. Section 4 of the FUA affords charter schools the option of deduction from revenue account or direct payment to the District's Charter Schools Division in 12 monthly installments, and it creates a procedure for disputed payments. Please provide assurances that the District will follow the payment procedures set forth in the FUA.

More importantly, the District does not have the legal right to unilaterally decide to offset funding owed to the Charter School. Special education funding and in-lieu of property tax funding are not related to Proposition 39. Moreover, the District has a ministerial obligation to transfer AB 602 funds and in-lieu property tax funding to the Charter School without any offset or reduction, and it is further our understanding that AB 602 funding is a restricted source of funding that may only for special education (see, e.g., Education Code Sections 56836.08-56836.159, 56836.165, 56836.173, 56836.21 and 56836.22). Consequently, the District may also only offset in-lieu of tax transfers by mutual agreement of the parties. The Charter School does not agree to allow the District to make offsets to its ministerial obligation to fund a Charter School – the Charter School does not believe that this is the best practice for keeping its books and it would likely violate Generally Accepted Accounting Principals. The District must invoice the Charter School for any costs of Proposition 39 and the Charter School will pay within 30 days of receipt of the invoice.

Therefore, the Charter School will not agree that any charges related to its occupancy of the facility may be deducted from the Charter School's revenue account and this will need to be revised in the District's Final Offer of Facilities.

#### **DRAFT FACILITIES USE AGREEMENT**

Pursuant to 5 CCR Section 11969.9(k), the District and the Charter School must "negotiate an agreement regarding use of and payment for the space. The agreement shall contain at a minimum, the information included in the notification provided by the school district to the charter school." (Emphasis added). It does not provide for nor allow a district to require a charter school to sign an agreement unilaterally drafted by the district as a condition of receiving

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facilities from the district. Therefore, the District may not require the Charter School to sign the draft Facilities Use Agreement ("Agreement") attached to the Preliminary Offer – instead, the District and Charter School must negotiate the terms of the Agreement and come to a mutual concurrence.

While the Charter School does not object to a majority of the provisions in the draft Facilities Use Agreement, the Charter School will take this opportunity to register several items that will need to be changed. By noting a few of its concerns below the Charter School does not waive its rights to fully negotiate a mutually agreeable FUA upon acceptance of a final facilities offer.

1. Article 4.5 discusses payment of the oversight fee. As a State Board of Education-approved charter school, the District is not entitled to charge the Charter School any oversight fee and this provision must be removed.

2. Article 14, Section 14.2(c) requires the Charter School to pay for the repair of any damages to the facility. However, this Article will need to be expanded to address the use of insurance proceeds to repair the facilities, as well as the timeline under which the repairs must be performed.

3. Article 11, Sections 11.6 and 11.7 must be amended to reflect that the Charter School will perform ongoing operations and maintenance in compliance with District policies, unless actual school district practice substantially differs from official policies. As described in detail above, the implementing regulations provides that ongoing operations and maintenance of facilities ("M&O") are the responsibility of the Charter School (5 CCR Section 11969.4(b)). The Agreement seeks to mandate that the District perform M&O services and includes a proposal to charge the Charter School for these services. The Charter School does not agree that the District will perform M&O services.

4. Article 16, Section 16.1(a) is missing language after the phrase "Code of Civil Procedure Section 1161" and will need to be edited.

5. Article 16, Section 16.2(b) will need to be revised to require the District to make reasonable efforts to find another occupant for the facilities in the event the Charter School breaches the Agreement and abandons the facility.

6. Article 19, Section 19.3 contains a misplaced reference to compliance with the Asbestos Hazard Emergency Response Act.

#### **ILLEGAL CONTINGENCIES**

The District's preliminary proposal includes illegal contingencies, including the contingency that the charter school waive its rights to challenge the District's compliance with Proposition 39 for the 2009-2010 school year. Proposition 39 and the Implementing Regulations do not allow the District to require the Charter School to waive its rights to challenge the

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District's full compliance with Proposition 39 as a condition to accepting the offer of facilities. In fact, this type of contingent approval was specifically rejected by the Santa Clara Superior Court (Case No.: 1-04CV027980).

\* \* \*

The Charter School respectfully requests that the District completely revise its allocation of facilities to the Charter School and comply with its obligations under the Proposition 39 law and implementing regulations by allocating the Charter School twenty-three classrooms on the campus of Daniel Webster Middle School, Ralph Waldo Emerson Middle School, or Richland Middle School, as well as reasonably equivalent access to the specialized and non-teaching space on the campus. If the District continues with its proposal to allocate the current site to the Charter School, the Charter School will be left with no other option but to litigate this matter. We are hopeful that the District will act in the best interest of all students residing in the District and provide a reasonably equivalent and contiguous school facility in full compliance with the law.


Please do not hesitate to contact me should you have any questions. I look forward to working with the District to resolve these issues.

Sincerely,  
LAW OFFICES OF SPECTOR,  
MIDDLETON, YOUNG & MINNEY, LLP



PAUL C. MINNEY  
ATTORNEY AT LAW

LAW OFFICES OF MIDDLETON,  
YOUNG & MINNEY, LLP

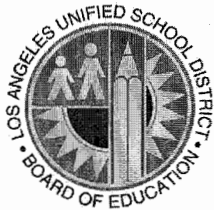


SARAH J. KOLLMAN  
ATTORNEY AT LAW

cc: Sharon Weir and Judith Bronowski  
John Lemmo/Greg Moser



# EXHIBIT L



*Los Angeles Unified School District*  
**Charter Schools Division**

333 S. Beaudry Ave., Los Angeles, CA 90017  
213.241.2665 Fax 213.241.6862

**Ramón C. Cortines**  
Superintendent

**José J. Cole-Gutiérrez**  
Executive Director

January 31, 2009

**SENT BY U.S. MAIL, FAX, AND EMAIL**

Eugene Selivanov  
Ivy Academia Charter School  
20620 Arminta Street  
Winnetka, CA 91306

**Re: Preliminary Proposal Regarding Space to which Ivy Academia Charter School may be Provided Access (Title 5 California Code of Regulations section 11969.9(f))**

Dear Charter School Operator,

Pursuant to Title 5 California Code of Regulations section 11969.9(f), the Los Angeles Unified School District ("LAUSD") provides this preliminary proposal regarding the space to which Ivy Academia Charter School may be provided access. LAUSD proposes to provide the following space:

- 1. Name and address of the LAUSD school site:**  
Sunny Brae Elementary School  
20620 Arminta Street  
Winnetka, CA 91306
- 2. No. of Exclusive Use Teaching Stations:**  
8 classrooms
- 3. No. of Exclusive Use Non-Teaching Stations:**  
1 office space
- 4. No. of Shared Use Teaching Stations:**  
None
- 5. No. of Shared Use Non-Teaching Stations**  
Coordinated shared use is available for all common areas including the library, computer lab, auditorium/multi-purpose room, playfields and athletic areas.

Pursuant to Title 5 California Code of Regulations section 11969.9(f), the Los Angeles Unified School District ("LAUSD") provides the following information:

- 1. The projection of in-district ADA on which the proposal is based:** 1045
- 2. Conditions pertaining to the space:**
  - a. Use Agreement.

The Charter School's governing board must approve the enclosed LAUSD Single Year Co-location Use Agreement ("Use Agreement") and its approval must be evidenced by a resolution that identifies the individual authorized to execute the Use Agreement and execution of the Use Agreement by the authorized individual. All conditions set forth in the enclosed Use Agreement are incorporated herein by this reference.

- b. Unless otherwise agreed to by LAUSD and the charter school, the total available days of use of the shared teaching stations shall be shared equally between the parties with each party having the use of these stations for two (2) days per week and the non-designated day will alternate between the parties.
- c. Unless otherwise agreed to by the parties, the shared teaching stations shall be used by one party on any given day. This will allow each party to have uninterrupted use of the station and the flexibility to run through long course work.
- d. Any charges related to the charter school's occupancy of the space will be deducted from charter schools' revenue account (e.g., AB 602 and in lieu of property tax funds) in 10 equal monthly payments beginning with the August revenue to be paid in late August or early September.

**3. Projected pro rata share amount and description of methodology.**

The projected pro rata share amount for the 2009-10 school year is \$7.62 per square foot of the total exclusive and proportional shared use space. Please find enclosed a description of methodology.

**4. List and Description of Comparison Group Schools used in Developing the Preliminary Proposal.**

The following LAUSD schools were selected as Comparison Group Schools based on the Ivy Academia Charter School's enrollment documentation demonstrating which LAUSD schools the majority of Ivy Academia Charter School's students would otherwise attend:

- a. Sunny Brae Elementary School, Grades K-5, Traditional Calendar
- b. Columbus Middle School, Grades 6-8, Traditional Calendar
- c. Chatsworth High School, Grades 9-12, Traditional Calendar

**5. Description of the Differences between the Preliminary Proposal and Charter School's Facilities Request.**

While his preliminary proposal meets Ivy Academia's facilities request to continue their successful co-location at Sunny Brae Elementary School, it does not fully accommodate Ivy Academia's complete projected in-District ADA for the 2009-10 school year. At this time, LAUSD does not have occupancy-ready contiguous space to accommodate Ivy Academia's full K-12 in-District ADA for the 2009-10 school year.

Should you have any questions or comments regarding this Preliminary Proposal, please contact Ana Teresa Fernandez at (213) 241-5433 or via e-mail at [anateresa.fernandez@lausd.net](mailto:anateresa.fernandez@lausd.net). Please **DO NOT** contact the LAUSD school site directly.

Sincerely,



José J. Cole-Gutiérrez  
Executive Director

**ATTACHMENTS**

c: Ana Teresa Fernandez  
Gregory McNair

# EXHIBIT M



LAW OFFICES OF MIDDLETON, YOUNG & MINNEY, LLP

APRIL 30, 2009

VIA: E-MAIL, FACSIMILE, AND  
FIRST CLASS MAIL

PAUL C. MINNEY  
JAMES E. YOUNG  
MICHAEL S. MIDDLETON  
LISA A. CORR  
AMANDA J. MCKECHNIE  

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JESSICA ADAMS ROBINSON  
JERRY W. SIMMONS  
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OF COUNSEL  
SUZANNE A. TOLLEFSON

Jose Cole-Gutiérrez  
Executive Director  
Charter Schools Division  
LOS ANGELES UNIFIED SCHOOL DISTRICT  
333 S. Beaudry Ave. 20<sup>th</sup> Floor  
Los Angeles, CA 90012

**Re: CHAMPS Charter High School  
Response to District's Proposition 39 Final Offer**

Dear Mr. Cole-Gutiérrez:

Our office is in receipt of the Los Angeles Unified School District's ("District") Final Offer of facilities pursuant to Proposition 39, made to CHAMPS Charter High School ("Charter School") and dated April 1, 2009. The District's Final Offer is for exclusive use of ten classrooms (10), one office room, and shared use of two (2) spaces identified as "library and computer lab" as well as non-specialized space identified as "auditorium, playfields, gym, cafeteria" at Columbus Middle School, and is based on an in-District Average Daily Attendance ("ADA") projection of 485 ADA.

As an initial matter, I would note that the District's Final Offer states that "the District's Office of General Counsel will respond [to the Charter School's letter of February 27, 2009] on behalf of the Charter Schools Division directly to the Law Office of Middleton, Young & Minney, LLP. Our office has received no such correspondence.

While the Charter School appreciates the efforts of District staff in an attempt to reach workable facilities solutions that balance the needs of all students, including those in charter schools, please be aware that the Charter School has identified serious procedural and substantive legal deficiencies in the District's Final Offer. However, because the Charter School feels that it is compelled to accept the offer in order to work with the District to provide its students with equal and accessible education choices, and because the lack of or a delay in the provision of District facilities for the 2009-10 school year would make it impossible for the Charter School to operate and serve its enrolled

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students in the fall, and would cause significant, irreparable harm to the future success of the Charter School, **the Charter School is notifying the District that it accepts and will occupy the allocated space.** This acceptance is made without acknowledging the sufficiency of the allocated space under applicable law and without waiving any of the Charter School's legal rights under applicable federal law, including Proposition 39 and the Implementing Regulations. Moreover, despite this acceptance, the Charter School reserves any and all rights it may have to challenge those aspects of the Final Offer that the Charter School believes violate the substantive and procedural requirements of Proposition 39 and the Implementing Regulations. **This acceptance is also conditioned on reaching agreement with the District about the proper responsibility for maintenance and operations at Columbus, as well as attendant revisions to the pro rata share as fully outlined below.**

The Charter School also wishes to ensure that the District is aware of the significant burdens its allocation places on the Charter School, including: 1) a prohibitive and illegal maintenance and operations charge that is more than the Charter School currently pays for its entire alternative facility; 2) the costs of transporting its students to a location far away from its other locations; 3) an allocation based on a reduced number of students requires the Charter School to split its students between two campuses since its total enrollment cannot be accommodated at Columbus; 4) the impact on faculty, administration and support staff who will be split between two campuses and must transport themselves to a distant location; and 5) the impact of the emotional environment of the host school, which will be directed toward our students and staff.

Lastly, this letter shall serve another purpose: to notify the District that the Charter School is formally requesting to begin the dispute resolution process regarding the District's Proposition 39 offer for the 2009-2010 school year, pursuant to Element 14 of the Charter School's charter. The Charter School would prefer to fold this process into the ongoing dispute resolution process the parties have already been involved in for the District's violation of Prop. 39 for the 2008-2009 school year.

In addition, the Charter School disputes the contention contained in the District's letter of March 20, 2009 that the Charter School's February 27, 2009 request for Dispute Resolution was premature, given the District's past failures to comply with its full responsibilities under Proposition 39. This is further supported by the fact that the District's Final Offer has not changed substantively from its Preliminary Offer. However, in the interests of administrative convenience, without conceding its argument that the Dispute Resolution process was appropriate after receipt of the Preliminary Offer, and assuming the District does not agree to combine this dispute resolution process with that for 2008-2009, this letter shall serve as the Written Notification in accordance with the Charter School's dispute resolution provision; a written response is due from the District within twenty (20) business days from today, or on **May 29, 2009**. The District and the Charter School will also need to schedule a conference to discuss this issue within fifteen (15) business days from the date the Written Response is received by the Charter School.

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**THE DISTRICT FAILED TO RESPOND TO THE CHARTER SCHOOL'S CONCERNS**

5 CCR Section 11969.9(h) requires the District to respond to the concerns or counter-proposals in the Charter School's letter of February 27, 2009. The District's Final Offer does not contain any such response and therefore violates 5 CCR Section 11969.9(h).

**CHARTER SCHOOL AND DISTRICT STUDENTS ARE SUPPOSED TO BE TREATED EQUALLY WHEN IT COMES THE ALLOCATION OF FACILITIES BETWEEN THEM**

As already noted in the Charter School's letter of February 27, 2009 (page 2), in allocating the Charter School ten classrooms to serve 485 in-District students, on a crowded and shared District campus, the District has violated the basic premise of Proposition 39: that public school facilities be shared equally and fairly among all public school students. It has also violated the requirement to "give the same degree of consideration to the needs of charter school students as it does to the students in district-run schools," (*Ridgecrest Charter School v. Sierra Sands Unified School District*, 130 Cal.App.4th 986 (2005).)

The District is well aware of this requirement: the Charter School has been in dispute resolution with the District for more than one year regarding the failure of the District to offer any facilities to the Charter School for the past two years, and the Los Angeles Superior Court reiterated the District's legal obligations in great detail in its opinion ruling against the District and finding for the New West Charter School that the District has violated its responsibilities under Proposition 39 for the 2008-2009 school year. Needless to say, it is disappointing to see that rather than take any affirmative action to create the space necessary to house all District students in reasonably equivalent facilities, in compliance with its statutory obligation, the District has instead chosen to again claim it is unable to accommodate some in-District charter school children, and for the remaining charter school children, it fails to meet its legal obligations under Proposition 39 and the Regulations to provide reasonably equivalent and contiguous school facilities. In addition, the District's letter of March 20, 2009 suggests that the Charter School and the District have been working closely to come to an alternative solution; however, all meetings between the District and Charter School have not resulted in any tangible commitment by the District to create a long-term facilities solution. Plain and simple, the District continues to discriminate against public school children attending charter schools and continues to shirk its clear responsibilities under the law to share its schools facilities equitably with all public school children.

**THE DISTRICT HAS FAILED TO ALLOCATE A REASONABLY EQUIVALENT FACILITY TO THE CHARTER SCHOOL**

**THE DISTRICT HAS PROPERLY IDENTIFIED THE COMPARISON SCHOOLS BUT FAILED TO DESCRIBE THEM AS REQUIRED BY THE IMPLEMENTING REGULATIONS**

The District's Preliminary Offer failed to describe the condition of the comparison schools – properly identified as Grant High School, North Hollywood High School, and Van

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Nuys High School – as required by 5 CCR Section 11969.3(f). The District's Final Offer fails to remedy this omission.

THE DISTRICT HAS USED THE INCORRECT PROJECTED ADA

As set forth in great detail in the Charter School's correspondence of February 27, 2009 (pages 3-4), the District's Preliminary Offer used an improper ADA of 250 students for the Charter School, and inappropriately reduced the Charter School's projected ADA based on a cursory and faulty review of the Charter School's supporting documentation. The Charter School would note that its many intent-to-enroll forms, high standardized scores, and overflowing wait list make its enrollment projections extremely reasonable, especially if the District were to actually provide the Charter School with facilities sufficient to accommodate its student population. While the District's Final Offer uses a projected ADA of 485 students, this is still far below the 751 in-District ADA projected by the Charter School and backed up with substantial supporting documentation.

Furthermore, the District's Final Offer claims that it is based on a projected ADA of 485 students, but an allocation of 10 classrooms to accommodate all these students would result in a teaching station-to-ADA ratio of 48.5 students per teaching station. This ratio, as noted below, is far higher than the District's estimated ratios and thus violates 5 CCR Section 11969.3(b)(1).

THE DISTRICT HAS FAILED TO PROPERLY ALLOCATE SUFFICIENT TEACHING STATIONS TO THE CHARTER SCHOOL

The District's Preliminary Offer allocated ten (10) teaching stations to the Charter School to accommodate its projected 485 ADA. As outlined in the Charter School's correspondence of February 27, 2009, the District must provide a facility to the Charter School with the same ratio of teaching stations to ADA as those provided to students in the comparison group of schools. 5 CCR Section 11969.3(b)(1). There is no such thing as a fractional classroom for a single grade level of students and the allocation cannot be based upon the District's "loading standard," nor can it be based on an arbitrary and fabricated formula.

The allocation of teaching stations in the District's Final Offer has not changed from the Preliminary Offer, thus this allocation continues to be insufficient to accommodate the Charter School's projected ADA of 485 students in conditions reasonably equivalent to those enjoyed by District students for all the reasons set forth in the Charter School's correspondence of February 27, 2009 (pages 5-6). Therefore, the District's Final Offer violates 5 CCR Section 11969.3(b).

THE DISTRICT HAS FAILED TO PROPERLY ALLOCATE SUFFICIENT SPECIALIZED CLASSROOM SPACE TO THE CHARTER SCHOOL

The District's Final Offer failed to allocate sufficient and reasonably equivalent specialized classroom space to the Charter School, as further described in the Charter School's correspondence of February 27, 2009 (pages 6-7). Just as in the Preliminary Offer, the District's Final Offer again allocates two specialized classrooms spaces, identified as "library and

computer lab,” to the Charter School.

As previously noted, specialized classroom space is not just science labs and computer labs. It is any teaching space that is not a traditional teaching station, including music and art rooms, computer labs, science labs, and resource rooms. The comparison schools, Grant High School, North Hollywood High School, and Van Nuys High School, all have computer labs and media centers, science labs with gas and water hook-ups, art, music and theater space, and shop and agricultural (at Grant) space. Without this space, the District is denying Charter School students the opportunity to experience a comprehensive science education. Furthermore, the Charter School is a performing arts high school with a broad arts curriculum – yet the District has not allocated any space in a theater or auditorium, art space, or music space, a shocking omission.

Given the specialized classroom spaces the students in the comparison schools enjoy, the lack of any reasonably equivalent allocation of science lab space, media space, art space, music space, and theater space demonstrates that District’s Final Offer is not reasonably equivalent and violates 5 CCR Section 11969.3(b)(2) and Section 11969.9(h)(1).

THE DISTRICT HAS FAILED TO PROPERLY ALLOCATE SUFFICIENT NON-TEACHING STATION SPACE TO THE CHARTER SCHOOL

The District’s Preliminary Offer failed to allocate sufficient and reasonably equivalent non-teaching station space to the Charter School, as further described in the Charter School’s correspondence of February 27, 2009. The District’s Final Offer allocates non-teaching station space identified as “auditorium, playfields, gym, cafeteria” and one office space to the Charter School.

As previously noted, Grant High School, North Hollywood High School, and Van Nuys High School enjoy non-teaching station spaces including libraries, gymnasiums, outdoor recreational space, including blacktop basketball courts, gymnasiums, locker rooms, kitchens, cafeterias, multipurpose rooms, administrative offices, nurse’s office, theaters, teacher workrooms, psychologist and counselor offices and counseling centers, conference rooms, supply storage areas, and RSP and special education offices. Notably, the District would likely find it difficult to provide these kinds of non-teaching station spaces that are reasonably equivalent to the comparison schools – all comprehensive high schools – on a middle school campus, suggesting the District should have allocated space on a high school campus.

Given the non-teaching station spaces the students in the comparison schools enjoy, the lack of any reasonably equivalent allocation of outdoor recreational space, including blacktop basketball courts, locker rooms, kitchen, multipurpose rooms, sufficient administrative offices, nurse’s office, theaters, teacher workrooms, psychologist and counselor offices and counseling centers, conference rooms, supply storage areas, and RSP and special education offices demonstrates that District’s Final Offer is not reasonably equivalent and violates 5 CCR Section 11969.3(b)(3) and Section 11969.9(h)(1).

**THE CONDITION OF FACILITIES ALLOCATED BY THE DISTRICT IS NOT REASONABLY EQUIVALENT TO THE CONDITION OF THE COMPARISON SCHOOLS**

The District's Preliminary Offer failed to perform any determination of whether the allocated facility – Columbus Middle School – is reasonably equivalent to the District's comparison schools. Pursuant to 5 CCR Section 11969.3(c), the District must assess "such factors as age (from latest modernization), quality of materials, and state of maintenance." The District must also assess the following factors:

1. School site size.
2. The condition of interior and exterior surfaces.
3. The condition of mechanical, plumbing, electrical, and fire alarm systems, including conformity to applicable codes.
4. The availability and condition of technology infrastructure.
5. The condition of the facility as a safe learning environment including, but not limited to, the suitability of lighting, noise mitigation, and size for intended use.
6. The condition of the facility's furnishings and equipment.
7. The condition of athletic fields and/or play area space.

The District's Final Offer failed to remedy this omission and thus continues to violate 5 CCR Section 11969.3(c). It is clear, however, that an allocation of ten (10) classrooms on a middle school campus does not provide space that is reasonably equivalent or comparable to space available on a comprehensive high school campus. Specifically, it is unlikely that the District could legitimately argue that the condition of space on a middle school campus could be reasonably equivalent to the condition of space on a high school campus, given that comprehensive high school like the comparison schools have more square footage and athletic field/play space and have facilities that are fundamentally different from typical middle school campuses.

**THE DISTRICT HAS NOT MADE A REASONABLE EFFORT TO LOCATE THE CHARTER SCHOOL WHERE IT REQUESTED TO BE LOCATED.**

As further outlined in the Charter School's letter of February 27, 2009 (9-10), Education Code Section 47614 requires that a district shall make reasonable efforts to provide a charter school with facilities near to where the charter school wishes to locate. Yet the site proposed by the District in both its Preliminary and Final Offers, Columbus Middle School, is located more than 10 miles away – on surface streets or the 101 – from where the majority of Charter School students reside and where the Charter School is currently located. Furthermore, there is no evidence in the record, the Preliminary Offer, the Final Offer, or anywhere else to demonstrate that the District made any effort, let alone a reasonable effort, to place the Charter School where it wishes to be located.

Further proof of the District's lack of effort to fully comply with Proposition 39 is the history of the mediation in which the Charter School and the District have been participating. In the two months since the Charter School submitted its letter of February 27, 2009 (which

outlined the lack of progress in mediation in the past year), no further developments have occurred, despite a meeting with Ramon Cortines and a visit to the Grant High School site. In fact, the District has only acted to take facilities off the table.

Therefore, the District's Final Offer violates Education Code Section 47614. The District should have considered the alternative sites/one of the District's closed sites – especially since the District is also required to reorganize its current class configurations to accommodate the needs of the Charter School: in the *Ridgecrest* decision, the court noted that “accommodating a charter school might involve moving district-operated programs or changing attendance areas” and that “providing a contiguous school facility to a charter school might require disruption and dislocation among district students, staff and programs.” Moreover, while Proposition 39 provides that the District is not required to use general fund monies to meet its obligations under the initiative the District is required to use restricted sources of monies (e.g., bond monies, parcel taxes etc.). There is no evidence that the District has reviewed meeting its obligations under the law by using these additional sources of funds. Therefore, the District's Final Offer violates Education Code Section 47614.

#### **THE DISTRICT HAS INCORRECTLY CALCULATED THE PRO RATA SHARE**

As the Charter School explained in its letter of February 27, 2009 (pages 10-12), the Proposition 39 Implementing Regulations set forth the detailed methodology for calculating the pro rata share, which is defined as “a per-square-foot amount equal to those school district facilities costs that the school district pays for with unrestricted revenues from the district's general fund, as defined in sections 11969.2(f) and (g) and hereinafter referred to as “unrestricted general fund revenues,” divided by the total space of the school district times (2) the amount of space allocated by the school district to the charter school.” 5 CCR Section 11969.7. The pro rata share calculation included with the District's Final Offer has not changed from the pro rata share included with the Preliminary Offer.

The fact remains that the District's attempts to force the Charter School to use its maintenance and operations services will grievously harm the Charter School. The District claims that the Charter School must pay \$221,387.25 to occupy the allocated space – this is far more than the Charter School pays for its current leased site, an entire school site – which, by the way, actually includes science labs and an auditorium. Thus, given the significant negative impact the District's current assertions will have on the Charter School, the Charter School will reiterate those concerns here and note that its acceptance is conditional on the parties arriving at some agreement on this matter.

5 CCR Section 11969.7 provides that “facilities costs includes: (1) contributions from unrestricted general fund revenues to the school district's Ongoing and Major Maintenance Account (Education Code section 17070.75), Routine Restricted Maintenance Account (Education Code section 17014), and/or deferred maintenance fund; (2) costs paid from unrestricted general fund revenues for projects eligible for funding but not funded from the deferred maintenance fund; (3) costs paid from unrestricted general fund revenue for replacement of facilities-related furnishings and equipment, that have not been included in

paragraphs (1) and (2), according to school district schedules and practices"; and (4) debt service costs. Facilities costs "do not include any costs that are paid by the charter school, including, but not limited to, costs associated with ongoing operations and maintenance and the costs of any tangible items adjusted in keeping with a customary depreciation schedule for each item." Moreover, the regulations provide that the charter school shall be responsible for the routine repair and maintenance of the facility allocated and that the school district retains the obligation to provide the deferred maintenance on the school facility. (5 CCR Section 11969.4). Consequently, the pro rata share must not include any costs for the routine repair and maintenance of the facility – as these costs are costs assumed by the charter school.

The pro rata share is then calculated by dividing actual facilities costs in the year preceding the fiscal year in which facilities are provided and the largest amount of total space of the school district at any time during the year preceding the fiscal year in which facilities are provided.

The District's Final Offer includes the same spreadsheet attached to the Preliminary Offer, detailing the District's pro rata share calculation of \$7.62 per square foot. This quoted pro rata share is not properly calculated pursuant to 5 CCR Sections 11969.4 and 11969.7. As noted above the implementing regulations provides that ongoing operations and maintenance of facilities ("M&O") are the responsibility of the Charter School (5 CCR Section 11969.4(b)) and that any costs assumed by the Charter School cannot be included in the pro rata share calculation. The pro rata share and the draft facilities use agreement seek to mandate that the District perform M&O services without the authorization or consent of the Charter School. Even more egregious is the District's proposal to charge the Charter School for these services, not just once, but *twice*. These services, such as custodial, gardening, pest, and landscaping services, are included in the District's facilities cost calculation. The District then apparently seeks to "double dip" by charging the Charter School on a fee-for-service basis for M&O costs. (FUA, Sections 11.6 and 11.7.) The M&O fees are not part of the calculation for the pro rata share, and the District cannot force a charter school to purchase M&O services from it (5 CCR Section 11969.4(b)), nor is the District allowed to charge the Charter School anything other than the pro rata share for the use of the facilities. Education Code Section 47614(b)(1). The Charter School does not agree that the District will perform M&O services, thus these costs do not belong in the pro rata share calculation, and must be removed, and the Facilities Use Agreement must be amended to reflect that the Charter School will perform ongoing operations and maintenance in compliance with District policies, unless actual District practice differs from official policies.

In addition, the District appears to have used incorrect data in calculating its pro rata share. Specifically, 5 CCR Section 11969.7(d) requires that facilities costs must be determined "using actual facilities costs in the year preceding the fiscal year in which facilities are provided" – in other words, the District must perform the calculation using its 2008-2009 costs. Yet the District's worksheet, footnote 1, specifically says that the District has used 2007-2008 costs. As a result, its calculation is in violation of 5 CCR Section 11969.7(d).

Further, as previously requested, the District must provide a revised pro rata share calculation consistent with the law (and as set forth below). In our estimate the pro rata share

should be no more than \$.19 per square foot<sup>1</sup> (and only include Debt Service – assuming that the debt service payments are for facilities). We also request confirmation that, because the District is charging Charter School a pro rata share amount, it will only charge an oversight fee not to exceed one percent (1%) of the revenue of the Charter School, in accordance with Education Code Section 47613, 5 CCR Section 11969.7(f) and Section 4.5 of the form Facilities Use Agreement (“FUA”).

Because the District’s facilities costs include costs that are paid by the Charter School, “including costs associated with ongoing operations and maintenance,” (5 CCR Section 11969.) the costs for building and grounds, Air Filter Tech, pest management, custodial services and landscaping and gardening services should be removed from the District’s pro rata share calculation. Should the Charter School request such services from the District, the Charter School will pay for such services on a fee-for-service basis as contemplated by the FUA.

In addition, we are informed that the District’s police services will not come out to charter schools in the District, including the Charter School. Pro rata share amounts are intended to reflect a charter school’s portion of the District’s facilities costs that the charter school uses. Moreover, School Police Services are not included as a facilities cost, because it does not directly relate to the safety of the “physical plant” under 5 CCR Section 11969.2. As a result, because the Charter School does not use and will not benefit from the District’s police service, the inclusion of these costs in the pro rata share calculation is not appropriate.

The District also appears to have included utilities costs in its calculation. Not only does the Charter School pay for the utilities it uses on the site, but these amounts should be separately metered and billed to the Charter School. It is not appropriate nor provided for in the law to include these costs in the pro rata share calculation.

The District’s calculation also includes line items for “Office of Environmental Health and Safety” and “Insurance.” Currently the Charter School is not aware of any benefits or services it receives from these categories. For example, the Charter School provides and pays for the full spectrum of its insurance benefits, as required by its charter. Moreover, insurance is not contemplated under the Prop. 39 regulations as an acceptable “facilities cost.” Consequently these costs should be removed as well.

Lastly, the Proposition 39 regulations require final offers to include the charter schools’ total pro rata dollar amount. The District’s Final Offer only notes the charge for the exclusive use space, claiming that the amount will be finalized once the Charter School determines the sharing arrangements with the other occupants of the site. However, the District’s Final Offer or the attached map do not provide any information about the square footage of the site. Thus the

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<sup>1</sup> This is consistent with the District’s prior calculation of the pro rata share amount during the 2008/2009 school year offer; where the District separately calculated the pro rata share amount (at \$.17 per square foot per year) and then calculated a maintenance and operations fee of \$6.93. As noted, the District cannot force the charter school to purchase maintenance and operations services from the District and the District cannot get around this limitation by including its maintenance and operations fee in the so-called “pro rata share” calculation.

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Charter School is unable to estimate its likely pro rata share, and thus the District's Final Offer violates 5 CCR Section 11969.9(h)(6).

Please see the table below for the correct calculation:

Description	Total Costs	Sq. Ft. Cost Per Service	Per Square Foot	Total eligible facilities costs
<b>Debt Service – interest and principal on COPS (Ed Code §47614)</b>	\$13,119,002.22		<b>\$0.19</b>	<b>\$13,119,002.22</b>
<b>Maintenance &amp; Operations</b>			<b>\$6.55</b>	
Air Filter Tech and Building Engineering	\$7,849,032.00	\$0.11		
Pest Management	\$2,813,866.00	\$0.04		
Custodial (Buildings) 7 hours of time/day	\$174,545,539.88	\$2.50		
Rubbish Removal (94.55% of actuals)	\$7,898,655.49	\$0.11		
Routine Repairs General Maintenance (RRGM)	\$181,426,294.00	\$2.60		
Utilities	\$82,212,584.00	\$1.18		
Electricity	\$65,121,979.00			
Water	\$10,329,264.00			
Gas	\$6,761,340.00			
<b>Safe and Comfortable (Ed Code §11969.2)</b>				
School Police Services (94.55% of actuals)	\$41,602,000.00	\$0.60	<b>\$0.61</b>	
Office of Environmental Health & Safety (OEHS)	\$714,000.00	\$0.01		
<b>Deferred Maintenance (Ed. Code §17014)</b>	\$0.00		<b>\$0.00</b>	<b>\$0.00</b>
<b>Insurance (94.55% of actuals)</b>	\$5,319,684.00	\$0.08	<b>\$0.08</b>	
<b>Grounds Costs</b>			<b>\$0.20</b>	
Gardening Services	\$14,460,876.00	\$0.06		

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Landscaping/Tree Trimming	\$4,856,569.00	\$0.02		
Custodial (Grounds) 1 hour of time/day	\$24,935,077.13	\$0.11		
		<b>GRAND TOTAL/sq. ft.</b>	<b>\$7.62</b>	<b>\$13,119,002.22</b>
District Square Footage	69,742,006			
Actual Pro Rata Share				\$19/square foot

#### FACILITIES USE AGREEMENT

The District's Final Offer states that "a draft of the Single Year Co-Location Fundamental Use Agreement ("Use Agreement") was provided with the preliminary offer. Enclosed is a final Use Agreement. If CHAMPS Charter High School accepts the offer of space, CHAMPS Charter High School must:

- have its governing board approve the enclosed Use Agreement and;
- have the governing board approval evidenced in a resolution that identifies the individual authorized to execute the Use Agreement."

However, pursuant to 5 CCR Section 11969.9(k), "the school district and the charter school shall *negotiate* an agreement regarding use of and payment for the space." (emphasis added). While the Charter School noted several concerns with the Use Agreement, it notes that none of its requested substantive changes have been made to the document, nor has it had the opportunity to negotiate the terms with the District. As a result, the District may not require the Charter School to sign the Agreement as a condition of occupying the facilities until its terms have been negotiated and agreed upon.

While the Charter School does not object to a majority of the provisions in the Use Agreement, the Charter School will take this opportunity to register several items that it would object to as contrary to law or policy. The Charter School expects to schedule a meeting with the District to discuss and negotiate these concerns.

1. Article 2 discusses furnishings and equipment, and requires the District to provide furnishings and equipment that is "equivalent to those furnishings and equipment provided in the comparison group of schools in accordance with 5 CCR 11969.2" While the Charter School appreciate this commitment to comply with the law, as you are no doubt aware, the Proposition 39 Implementing Regulations have been recently revised, including a revision to the definition of how a district must furnish and equip allocated facilities: the District must provide "reasonably equivalent furnishings necessary to conduct classroom instruction and to provide for student services that directly support classroom instruction as found in the comparison group schools established under Section 11969.3(a), and if it has equipment that is reasonably equivalent to that in the comparison group schools."

Given this new definition, the District must provide reasonably equivalent furnishings and equipment both for classroom instruction and student services that directly support classroom instruction, not just for basic classroom instruction. In other words, the District must provide, in addition to student desks and chairs and white/blackboards, a teacher desk and chair, bookshelves, filing cabinets, telephones, bell systems, and technology such as networking, internet access, software, computers, LCD projectors, DVD player and any other equipment and furnishings provided in the classroom. In addition the District must provide a pro rata share of any other furnishings and equipment that are not in each classroom but which District teachers use to support instruction in their classroom.

2. Article 7, Section 7.2 requires the Charter School to notify the District as to its scheduled use of the Site almost two months in advance to receive priority over Civic Center requests for use of the Site. Given that other District schools are not required to provide similar advance notice under the District's Civic Center Act policy, this provision will need to be changed to mirror the District's policy.

3. Article 9, Section 9.1 discusses surrender of the premises, and requires the Charter School to pay to remove alterations to the Site, even if the District made those alterations. While the Charter School would be amenable to absorbing costs of removal of its own alterations, it is not appropriate for the Charter School to pay for removal of the District's alterations.

4. Article 11, Sections 11.6 and 11.7 must be amended to reflect that the Charter School will perform ongoing operations and maintenance in compliance with District policies, unless actual school district practice substantially differs from official policies. As described in detail above, the implementing regulations provides that ongoing operations and maintenance of facilities ("M&O") are the responsibility of the Charter School (5 CCR Section 11969.4(b)). The Agreement seeks to mandate that the District perform M&O services and includes a proposal to charge the Charter School for these services. The Charter School does not agree that the District will perform M&O services.

5. Article 11, Section 11.2 allows the District to perform an obligation that the Charter School is required to but fails to perform under the Agreement, and states that "any performance by LAUSD of Charter School's obligations shall not waive or cure such default." This last sentence must be removed. If the Charter School must reimburse the District for all costs incurred in performing an obligation, and the obligation has been performed in full, it is not appropriate for the default to be held against the Charter School going forward.

6. Article 14, Section 14.2(c) requires the Charter School to pay for the repair of any damages to the facility. However, this Article will need to be expanded to address the use of insurance proceeds to repair the facilities, including insurance proceeds received by the District, as well as the timeline under which the repairs must be performed.

Jose Cole-Gutierrez  
Re: CHAMPS Charter High School  
Response to Final Offer  
April 30, 2009  
Page 13 of 14

7. Article 16, Section 16.2(b) will need to be revised to require the District to make reasonable efforts to find another occupant for the facilities in the event the Charter School breaches the Agreement and abandons the facility.

8. Article 17 will need to be revised to allow the Charter School to terminate the Agreement if the District defaults; the District may terminate the Agreement if the Charter School defaults and this provision should be reciprocal.

9. Article 19, Section 19.3 contains a misplaced reference to compliance with the Asbestos Hazard Emergency Response Act.

#### **DISPUTE RESOLUTION**

Because of the District's procedural and substantive violations of its responsibilities under Proposition 39, this letter shall also serve as written notification under Element 14 of the Charter School's charter that the Charter School is activating the Dispute Resolution process. Under these procedures, a written response must be tendered to the Charter School by the District within twenty (20) business days from the date of receipt of this letter – no later than May 29, 2009.

\* \* \*

As noted at the beginning of this letter, because the Charter School feels that it is compelled to accept the Final Offer in order to work with the District to provide its students with equal and accessible education choices, the Charter School is notifying the District that it will occupy the limited space offered by the District, conditioned on the District's revision of its pro rata share amount to remove Maintenance and Operations amounts and other inappropriate fees as noted herein, as well as resolution of other issues as set forth in this letter. In addition, it makes this acceptance with a full reservation of rights, and without waiving any of its legal rights under applicable local, state, or federal law, including Proposition 39 rights and remedies, and reserves any and all rights it may have to challenge those aspects of the Final Offer that the Charter School believes violate the substantive and procedural requirements of Proposition 39 and the Implementing Regulations.

Please do not hesitate to contact me should you have any questions. I look forward to working with the District to resolve these issues.

Sincerely,

LAW OFFICES OF MIDDLETON,  
YOUNG & MINNEY, LLP

  
PAUL C. MINNEY  
ATTORNEY AT LAW

MYM

*Jose Cole-Gutierrez*  
*Re: CHAMPS Charter High School*  
*Response to Final Offer*  
*April 30, 2009*  
*Page 14 of 14*

**LAW OFFICES OF MIDDLETON,  
YOUNG & MINNEY, LLP**

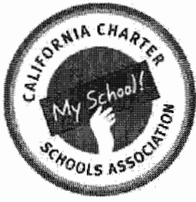
*Sarah Kollman*

**SARAH J. KOLLMAN**  
ATTORNEY AT LAW

Cc: Norm Isaacs, Founder and Principal – CHAMPS Charter High School  
Teri Riggs, Executive Director – CHAMPS Charter High School

MYM

# EXHIBIT N



tel: (916) 448-0995 1107 9th Street, Suite 700, Sacramento, CA 95814

{ www.myschool.org }

**Via E-Mail, Facsimile and U.S. Mail**

February 8, 2010

Ramon C. Cortines  
Superintendent of Schools  
Los Angeles Unified School District  
Administrative Office  
333 South Beaudry Avenue, 24<sup>th</sup> Floor  
Los Angeles, CA 90017

Re: Request that LAUSD Comply with Proposition 39 and Settlement Agreement

Dear Superintendent Cortines:

During this past year you and I have been working in our respective roles in an effort to provide school choice to the students and families of the Los Angeles Unified School District ("LAUSD"). Those of us in the charter school community have been encouraged by your positive comments about charter schools and the statements you have made about including charter schools in LAUSD's efforts to provide opportunities for school choice.

Despite your expressed support, it appears that District staff is not fulfilling obligations to the charter school community in respect to Proposition 39. Accordingly, I am writing to express my continuing concern over the way in which LAUSD approaches its responsibilities under Proposition 39 and to share with you some particular issues relating to LAUSD's lack of compliance with the law in respect to this year's Proposition 39 applications.

As you know, on November 7, 2000, California voters passed Proposition 39, which amended California's Education Code to include the requirement "that public school facilities **should be shared fairly among all public school pupils, including those in charter schools.**" (Ed. Code, § 47614, subd. (a) [emphasis added].) This statute clearly directs that "[e]ach school district **shall make available**, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students in **conditions reasonably equivalent** to those in which the students would be accommodated if they were attending other public schools of the district." (*Id.*, at subd. (b) [emphasis added].)

Accordingly, with the passage of Proposition 39, California voters decreed that public school students attending charter schools cannot be singled out for discrimination in facilities allocations. Proposition 39 recognizes that public school facilities were paid for by state and local taxpayers for the benefit and service of **all** California public school students, not just for those attending district-run schools, and therefore must be shared fairly among all public school students – charter schools included.

Proposition 39's implementing regulations ("Implementing Regulations"), reinforce the broad principle that districts must provide public school students attending charter schools adequate facilities on par with students attending district-run schools. To achieve that legal mandate, the Implementing Regulations create a series of affirmative steps and deadlines all districts must follow. All districts must:

Ramon C. Cortines  
Superintendent of Schools  
Los Angeles Unified School District  
February 8, 2010  
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- 1) Receive annual Proposition 39 facilities requests from charter schools submitted on or before November 1 of each year, review the charter school's projections of in-district and total average daily attendance ("ADA") and in-district and total classroom ADA, and, on or before December 1 of each year, express any objections in writing and state the projections the district considers reasonable;
- 2) Allow the charter school to respond on or before January 2 to any objections expressed by the district and to the district's ADA projections;
- 3) **Identify the proper comparison group of schools for determining the allocation of "reasonably equivalent" facilities by capacity and condition, make reasonable efforts to provide a facility where the charter school wishes to locate;**
- 4) **Provide a written preliminary offer of facilities on or before February 1 which includes a draft of any proposed agreement pertaining to the charter schools' use of the space and the projected "pro rata share" amount for the cost of the facilities offered to the charter school and a description of the methodology used to determine that amount;**
- 5) Allow the charter school the opportunity to respond to the preliminary offer on or before March 1; and
- 6) Issue a final offer of facilities on or before April 1 that responds to any concerns and/or counter proposals by the charter school and specifically identifies the number of classrooms, specialized classrooms, and non-classroom based space to be provided, arrangements for sharing space with district-operated programs, the in-district classroom ADA assumptions for the charter school upon which the allocation is based, the "pro rata share" fee to be charged, and other terms and conditions.

In addition to the District's statutory and regulatory obligations, this District is under contractual obligations to the California Charter Schools Association ("CCSA") and its membership. As you will recall, the District entered into a settlement agreement ("Settlement Agreement") with CCSA on or about April 22, 2008. The Settlement Agreement attempted to resolve claims that CCSA was forced to bring against LAUSD because LAUSD had refused to follow Proposition 39.

Despite the commitments in the law and in the Settlement Agreement, LAUSD continues to violate Proposition 39 and has failed to comply with the Settlement Agreement.

Just last week, 81<sup>1</sup> charter schools in LAUSD were anxiously awaiting their preliminary offers from the District. Most of these schools were sorely disappointed.

Instead of offers, 65 schools received short, cursory letters indicating that the District had not yet identified space for them. These letters failed to demonstrate any concerted or organized effort toward finding these schools space. No concrete action plan was identified indicating that the District would make any effort to accommodate these charter schools and their students. Instead, it simply appears

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<sup>1</sup> We understand that the District deemed five (5) schools "ineligible" and the one (1) remaining school is in negotiations with the District.

Ramon C. Cortines  
Superintendent of Schools  
Los Angeles Unified School District  
February 8, 2010  
Page 3

that the District gave itself a unilateral extension of time within which to respond under Proposition 39 by indicating that, "*The District will continue to evaluate potentially available space and will make final offers on April 1, 2010.*"

It appears that only 10 charter schools received preliminary offer letters. In at least a few of these cases, the preliminary offers appear legally actionable on their face. For example, the District offered a school with a projected ADA of 1100 the use of 8 classrooms and 1 office, resulting in 137+ students per classroom. In another case the District offers a school with a projected ADA of 564 the use of 7 classrooms and 1 office, resulting in 80+ students per classroom.

While Los Angeles charter schools have been exceedingly patient with LAUSD, the District's continued disregard for the requirements imposed on it by Proposition 39 and the Settlement Agreement cannot continue.

CCSA has extended many opportunities for collaboration with and support to the District. CCSA's members are deeply dedicated to educating public school students and do not wish to engage in a dispute with LAUSD. The charter community sincerely wishes to work toward providing effective options for LAUSD students and families. However, District actions such as those noted-above are irreconcilable with your expressions of cooperation and support for charter schools and their students and families. Moreover, such actions pose significant barriers to the growth of school choice through charter schools.

CCSA merely asks for its members what the law entitles them and their students to expect – that the public school facilities under LAUSD's control be allocated fairly so that all public school students have equal access to them.

Accordingly, CCSA hereby demands that LAUSD comply with Proposition 39 and the Implementing Regulations as confirmed by Section 3 in the Settlement Agreement by making legitimate and compliant facilities offers to charter schools for the 2010-11 school year. ***We expect the District to make compliant offers to all applicant charter schools by April 1, 2010.***

We sincerely hope LAUSD will change its course in relation to its treatment of charter schools under Proposition 39 and that those administering the Proposition 39 assignments in your office will move toward alignment with your stated support for school choice and the charter school community.

Sincerely,



Jed Wallace  
President and CEO  
California Charter Schools Association

cc: Parker Hudnut, LAUSD  
James Sohn, LAUSD  
Allison Bajracharya, CCSA  
Paul Escala, CCSA

# EXHIBIT O

## So-called school reform

**T**HE LOS ANGELES Unified school board looked transformation in the eye — and blinked. By overriding several recommendations of its top experts and cutting three of the region's most respected charter organizations out of the picture, the board sadly demonstrated once again that it is devoted more to the politics of running schools than to the education of students.

Charter school organizations submitted relatively few applications to run 30 new or underperforming schools — part of a multi-year initiative to give outside operators a chance to manage perhaps 250 — and in many cases they were passed over in favor of teacher groups by Supt. Ramon C. Cortines and his panel in charge of vetting the applications. Cortines gave a thoughtful, precise analysis of his choices, and we're not going to second-guess his decisions.

But then, in a shameful turn, the school board overruled him on several choices, pushing several charter groups out of the running and in one case introducing an amendment to the Public School Choice initiative with no discussion.

There is no way to ignore the effect of heavy lobbying by labor-related groups against the charter applicants. One board member reportedly voted against a certain charter because of personal dislike of its leader. Another said privately that the

board is already liberal in its approval of new charter schools; why give them district campuses as well? If those are among the prevailing opinions, it's hard to see why the board bothered with the initiative in the first place.

What was supposed to be one of the most important factors in the decisions — whether the applicants could demonstrate a record of educational success — ended up not being a factor at all. The board gave Mayor Antonio Villaraigosa a third school he sought against the recommendation of staff, who had proposed giving just two to his Partnership for Los Angeles Schools. The partnership has made a sincere, concerted effort to improve the schools it already runs, but its record is mixed. Meanwhile, charter groups such as Green Dot Public Schools, Inner City Education Foundation and the Alliance for College-Ready Public Schools, known as committed school operators with excellent records, were given none. In all, charter groups ended up with only four of the 30 schools.

We stand by our original support for the idea of creating a competitive mix of innovative educational models in the school district — and we applaud the teacher groups that devised their own, strong plans for reform. But we're also forced to stand by our original suspicion that the board would find many ways to make a mess of it.

# EXHIBIT P

# **LOS ANGELES UNIFIED SCHOOL DISTRICT**

## **POLICIES AND PROCEDURES REGARDING ALLOCATION OF FACILITIES TO CHARTER SCHOOLS UNDER EDUCATION CODE SECTION 47614**

REVISED, JUNE, 2008

## I. INTRODUCTION AND OVERVIEW

Education Code section 47614, regarding use of school district facilities by charter schools, was amended by passage of California Ballot Proposition 39 (2000). Proposition 39 required school districts to share public school facilities with charter schools. Regulations drafted by the California Department of Education and disseminated by the State Board of Education defined procedures and established timelines, and further identified the respective obligations and responsibilities of school districts and charter schools. The Regulations were recently amended, becoming operative on March 29, 2008. (See Cal. Code Regs., tit. 5, §§ 11969.1 – 11969.11.)

The Los Angeles Unified School District's Policies and Procedures Regarding Allocation of Facilities to Charter Schools under Education Code section 47614, originally adopted and approved by its governing Board of Education of the City of Los Angeles on March 30, 2004, is hereby revised to conform with existing Code section 47614 and the Regulations implementing it, and as the statute and regulations may be hereafter amended or revised from time to time.

## II. GENERAL PROVISIONS

*Deadlines.* A Timeline, attached hereto as Exhibit A, is intended as a summary only of the deadlines as set forth in the Regulations. In the event any deadline specified in the Regulations falls on a Saturday, Sunday, or official State holiday, the deadline shall be extended to the next business day.

*Obligations of District and Charter School.* The Los Angeles Unified School District and each charter school requesting use of District facilities ("Applicant" or "Charter School"), shall abide by the respective obligations and responsibilities as detailed in the Regulations.

*Proposition 39 Requests to the District.* The District shall consider only those Proposition 39 requests that are legally-compliant under Code section 47614 and the Regulations.

## III. SPACE TO BE PROVIDED TO CHARTER SCHOOLS

The following provisions supplement Proposition 39 and the Regulations:

A. Consistent with the statute and Regulations as each may be hereafter amended or revised from time to time, each Charter School that makes a legally compliant facilities request shall be entitled to a timely, legally compliant (under

Proposition 39 and the Regulations) offer of facilities at a District facility, and the offered space shall be reasonably equivalent to that space which charter school students would occupy if they attended District-operated schools.

B. In order to share fairly the burdens caused by inadequate space in all District public schools for all public school students, the District is not required to make space available to an Applicant at a District-owned school site where doing so would result in any of the following:

1. Require a District school to convert to a multi-track, year-round calendar or to remain on a multi-track year-round calendar. The District, however, may offer space to a charter school on a multi-track basis if the charter is currently operating on a multi-track calendar in District-owned space, the school on which the space is being offered is operating on a multi-track calendar, or the charter school authorizes such an offer.
2. Require District students to involuntarily ride a bus to school.
3. Restrict the District school or charter school from the ability to maintain full-day kindergarten at schools where kindergarten is offered.
4. Require a District school to continue or begin a traveling teacher program, or increase the number of teachers on the campus forced to "travel" due to a lack of available classroom space, unless the number of teaching stations offered to a charter school may recognize the need for the charter school teachers to travel, as well.
5. Restrict the ability of a District school to maintain appropriate space and set-aside rooms for the maintenance of the following District programs and policies, while recognizing the need to provide for the reasonable shared use of such space and set-aside rooms with charter schools. Set-aside space and rooms allocated for any such use shall be shared according to a formula to be agreed upon between LAUSD and the California Charter Schools Association, in consideration of the following:
  - a. Each District school shall be able to operate a parent center.
  - b. Each District school shall be able to maintain Learning Centers for special and general education students.
  - c. Each District middle and high school shall be able to maintain a School Based Health Clinic.

d. District schools shall be able to maintain assessment centers for pre-school youngsters, room for occupational therapy and physical therapy, sufficient space for special day class youngsters (SWD), adequate space for small group work for the school psychologist, speech and language therapists, etc.

e. Each District school shall be able to maintain reasonable space for computer and science labs, multimedia and technology rooms and textbook rooms.

C. Other provisions regarding the sharing of District facilities:

1. Early childhood education programs and adult programs in District facilities as of the 2007-08 school year will remain in the space they currently use.

2. Early childhood education programs may be expanded to elementary school sites not currently accommodating those programs, provided the District remains able to offer Proposition 39-compliant space somewhere in the District, and as close to the general geographic area requested by a Charter School as reasonably possible. The expansion of any adult education programs (to the extent they are not serving a grade 9-12 population) located on a K-12 campus shall first respect the need to make a legally compliant offer of facilities to charter schools making requests under Proposition 39.

3. Each District and Charter School shall be able to utilize space on secondary schools necessary to implement and operate small learning communities, including space for teacher planning and meetings and administration for small learning communities.

4. Each District and Charter School shall be able to participate in any new state programs for which funding has been made available, provided the District's Joint Facilities Planning Process with Charter Schools adjusts to account for changes in available space.

D. The determination of when reasonably equivalent facilities are being shared fairly with charter school students will include, but not be limited to, the acknowledgement that each District school must respect the class sizes mandated by the 2006-09 United Teachers of Los Angeles collective bargaining agreement and state law, including the K-3 Class Size Reduction program and SB 1133 (2006) (codified at Ed. Code section 52055.700 *et seq.*). Offers of facilities will recognize the need to share fairly the burdens caused by the inadequate space in District schools for all public school students.

#### IV. TERMS OF USE OF DISTRICT FACILITIES UNDER PROP. 39

A Charter School that accepts an offer of space shall execute a form Facilities Use Agreement with the District.

## EXHIBIT A

### TIMELINE SUMMARY

<b>DATE</b>	<b>TASK</b>
On or Before November 1	Deadline for charter school and prospective charter schools to submit facilities requests for the following school year; deadline for prospective charter school to submit charter to be eligible for facilities in following fiscal year.
On or Before December 1	Deadline for District to object in writing to charter school applicant's ADA projections, and to provide counter-projections
On or Before January 2	Deadline for charter school applicant to respond to District's ADA projection objections; the applicant shall reaffirm or modify its ADA projections
On or Before February 1	Deadline for District to forward to charter school applicant a written preliminary proposal
On or Before March 1	Deadline for charter school applicant to respond in writing to District's preliminary proposal
On or Before March 15	Deadline (during the fiscal year preceding the year for which facilities are requested) for approval of applicant's petition to remain eligible for District facilities
On or Before April 1	Deadline for District to make final written offer to charter school applicant
By May 1 or 30 days after District's offer	Deadline for charter schools to notify the District, in writing, of their intent to occupy the offered facilities
Ten days prior to First Day of Charter School's Instruction	Deadline for District to furnish, equip and make allocated space available for occupancy

# EXHIBIT Q

**LOS ANGELES UNIFIED SCHOOL DISTRICT**

***Office of the Superintendent***

**Inter-Office Correspondence**

**To:** Members, Board of Education **INFORMATIVE**  
**Date:** December 14, 2009

**From:** Ramon C. Cortines  
Superintendent

**Subject:** **2010-11 PROPOSITION 39 IMPLEMENTATION & TIMELINE**

This informative will provide an overview of the District's obligations under Education Code 47614 ("Proposition 39) as well as the District's implementation process and timeline for the 2010-11 school year.

Please find two critical documents attached to this informative.. The first document is a spreadsheet of all the charter school facilities requests for the 2010-11 school year. The second is a spreadsheet of the District's projected 2010-11 operating capacities for all of the District's schools sorted by Local District. Over the next few months, staff will work to reconcile the requests with the limited availability of space on District campuses. Please note that the second document will be field-verified by staff in January and utilized as a preliminary guide to identify space. Many times the number of seats projected do not accurately reflect the availability of space on the corresponding campus.

**The District's Legal Obligation under Education Code section 47614**

With the passage of Proposition 39 in 2000, the District's obligation to provide facilities to charter schools changed fundamentally. Proposition 39 amended Education Code section 47614. Where, before the passage of Proposition 39, the District had a duty under section 47614 only to provide surplus space to charter schools, the District now has an obligation to share its facilities "fairly among all public school pupils, including those in charter schools." The law requires the District to treat charter school students who reside within District boundaries as District students.

In 2003, the Board of Education adopted a policy that defines fair treatment of non-charter and charter school students in the use of facilities and supports co-location on schools sites that have "underutilized facilities." In 2007, the District was sued by the California Charter Schools Association and two charter operators that, among other things, challenged the definition of underutilized facilities that could be made available to charter schools under the Board's policy. In order to avoid court ordered procedures that might be dramatically unfavorable with the District's facilities plans, the Board of Education directed that the case be

settled. The settlement agreement does not give charter schools any more legal rights than they are entitled to under the current law but does reiterate the District's commitment to make annual facilities offers to requesting charter schools.

#### **Settlement Summary**

The settlement agreement was carefully crafted by District counsel to maximize District flexibility in the assignment of classroom spaces. The settlement agreement does not give charter schools any more legal rights than those schools are entitled to under the current law. Rather, the agreement arguably grants more rights to the District than it would be entitled to under a strict reading of the law in that the agreement allows the District to maintain the core principles of the Facilities Building Program. The District is protected from offering space to a charter school at a District-owned school site where doing so would:

1. Require a District school to convert to a multi-track year round calendar or to remain on a multi-track year-round calendar.
2. Require District students to involuntarily ride a bus to school.
3. Restrict the District school from the ability to maintain full-day kindergarten at schools where kindergarten is offered.
4. Require a District school to continue or begin a traveling teacher program, or increase the number of teachers on the campus forced to "travel" due to a lack of available classroom space, unless the number of teaching stations offered to a charter school may recognize the need for the charter school teachers to travel, as well.
5. Restrict the ability of a District school to maintain appropriate space and set-aside rooms for the maintenance of specified District programs and policies.

These and other stipulations in the settlement are guiding the 2010-11 Proposition 39 implementation process.

#### **Implementation Process**

Under the direction of the Innovation & Charter Schools Division in collaboration with the Local Districts, the 2010-11 implementation process will occur as follows:

1. Charter schools submit their Proposition 39 requests to the Innovation and Charter Schools Division.
2. Master Planning & Demographics produces a report of available seats within the District utilizing the following criteria:

- The calculations include a reserve of 50 seats for elementary schools and 75 seats for secondary schools.
  - 2010-11 operating capacity is based on 2009 norm day data with reserve seats subtracted.
  - Secondary operating capacity is based on no traveling teachers.
  - Set-a-sides are held at their previously approved amount in the operating capacity calculations.
3. Local District and school-site leadership and staff provide information to their schools and community regarding Proposition 39 and the District's obligations and process.
  4. The Innovation & Charter Schools Division staff will meet with each Local District Superintendent and respective Directors prior to verify seat availability and make preliminary charter matches.
  5. The Local District Director coordinates with the Principal and leads a site review with the participation of the UTLA Chapter Chair to verify space availability, configuration and assess potential instructional impacts.
  6. Preliminary matches are submitted to the Superintendent for review and official approval.
  7. The Innovation & Charter Schools Division extends official offers to charter schools on April 1.
  8. Local District and school-site leadership and staff inform their schools and community about the offers extended.
  9. The Innovation and Charter School Division reports to the Board of Education for approval of facility projects for accepted offers.
  10. Leasing & Asset Management executes a one-year use agreement with charter operator.
  11. Applicable campus preparations are made.
  12. Co-location Orientation Session is held for District and Charter Principals of co-locating campuses.
  13. Charter school co-locates on campus for upcoming academic year.

#### **2010-11 Proposition 39 Timeline**

Please be advised of the following 2010 deadlines as prescribed by the revised Proposition 39 governing regulations:

February 1

Extend preliminary offers

April 1

Extend official offers

May 1

Charter schools respond to offers

10 Business Days Prior to First Day of Instruction

Charter schools occupy

These deadlines provide a limited timeframe to generate annual facilities offers.

**Please find below the District's space identification timeline:**

December/Early January

Local District meetings to review projected seat availability and make preliminary charter co-location matches.

January

Campus visits to verify seat availability, space configuration and assess instructional impacts.

Instruction committee reviews preliminary matches on a weekly basis after campus visits.

February

Preliminary facilities offers are provided to applicant charter schools.

I have heard concerns from some Board members regarding the lack of community awareness about this process. As a result, please note that I have added steps above where the leadership and staff of Local Districts and schools will provide information to their communities about the process and the District's obligation.

There is much work ahead and I will continue to keep the Board apprised of our efforts. Please feel free to contact José Cole-Gutiérrez or me with any questions or concerns. Thank you.

**ATTACHMENTS**

c: Leadership Council  
Local District Superintendents  
Jefferson Crain  
Jerry Thornton

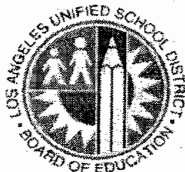
Charter School Applicant	Board District	Local District	Total In-District ADA	Application Review Outcome
Access Charter School	7	7	134.9	Accepted ADA
Animo Jefferson Charter Middle School	7	5	171	Accepted ADA
Animo Westside Charter Middle School	4	3	171	Accepted ADA
Ararat Charter School	3	2	172	Accepted ADA
Aspire Firestone Academy Charter High School	5	6	TBD	Requested Additional Info.
Aspire Hunt Academy Charter School	5	6	TBD	Requested Additional Info.
Obama, Barack H. Leadership Academy	2	4	Ineligible	Request Incomplete
Birmingham Community Charter High School	3	1	2621	Accepted ADA
California Academy for Liberal Studies (CALS) Early College High School	2	4	388	Accepted ADA
California Academy for Liberal Studies (CALS) Middle School	5	4	291	Accepted ADA
Camino Nuevo High School #2	2	4	132	Accepted ADA
Camino Nuevo Primary Center	2	4	228	Accepted ADA
Celerity Octavia Charter School	1	3	146.02	Accepted ADA
Charter High School of Arts - Multimedia & Performing	6	2	570	Accepted ADA
CHIME Charter Middle School	3	1	205	Accepted ADA
Citizens of the World Charter School - Hollywood	1	4	114	Accepted ADA
CLAS - Affirmation	1	3	544	Accepted ADA
College Ready Academy High School #9/Media Arts & Entertainment Design High School	5	5	284	Accepted ADA
College Ready Middle Academy #4	7	7	284	Accepted ADA
College Ready Middle Academy #5	2	5	284	Accepted ADA
Community Charter Early College High School	6	2	380	Accepted ADA
Community Charter Middle School	6	2	291	Accepted ADA
Crenshaw Arts/Tech Charter High, C.A.T.C.H.	1	3	TBD	Requested Additional Info.
Crescendo Charter School #9	7	7		Request Incomplete
Crescendo Charter Preparatory Central	1	7	132.72	Accepted ADA
Crescendo Charter School	1	7	200.84	Accepted ADA
Crescendo Charter School #7	1	8		Request Incomplete
Crescendo Charter School #8	1	7		Request Incomplete
Crown Preparatory Academy	1	3	112	Accepted ADA
Lou Dantzler Elementary	1	7	103	Accepted ADA
Lou Dantzler High School	1	3	218	Accepted ADA
Dantzler, Lou Preparatory Middle School	1	7	254	Accepted ADA
The Design High School	2	4	113	Accepted ADA
Endeavor College Preparatory Charter School	2	5	198	Accepted ADA
Equitas Academy	2	4	133	Accepted ADA
Excel Charter Academy	2	5	300	Accepted ADA
Fenton Primary Center	6	2	464	Accepted ADA

Charter School Applicant	Board District	Local District	Total In-District ADA	Application Review Outcome
Pullum, Fernando High School	7	5	131	Accepted ADA
Frederick Douglas Elementary School	1	3	79	Accepted ADA
Full-Circle Learning Academy	1	3	168	Accepted ADA
Futuro Preparatory Elementary School	2	5	122	Accepted ADA
Goethe International Charter School	4	4	181.04	Accepted ADA
ICEF Vista Middle Academy	1	3	81	Accepted ADA
Ingenium Charter Elementary School	7	7/8	328	Accepted ADA
Ivy Academia Charter School	3	1	1,298.65	Reduced ADA to 1100
KIPP Academy of Opportunity	1	3	259	Accepted ADA
KIPP Comienza Community Prep	5	5	108	Accepted ADA
KIPP Empower Academy	1	3	113	Accepted ADA
KIPP Raices Academy	5	5	270	Accepted ADA
Lakeview Charter Academy	6	2	305.28	Accepted ADA
Larchmont Charter School	1	4	254.8	Accepted ADA
Larchmont Charter School - West Hollywood	4	4	150	Accepted ADA
Legacy Charter High School	7	7	108	Accepted ADA
Los Angeles Academy of Arts & Enterprise	2	4	421.94	Accepted ADA
Los Angeles International Charter High School	5	4	157.15	Accepted ADA
Los Feliz Charter School through the Arts	4	4	270.68	Accepted ADA
Magnolia Science Elementary	2/3	1/2	285	Accepted ADA
Magnolia Science Academy	3	1	575	Accepted ADA
Magnolia Science Academy 2	3	1	350	Accepted ADA
Magnolia Science Academy 3	7	8	295	Accepted ADA
Magnolia Science Academy 4	7	8	225	Accepted ADA
Magnolia Science Academy 5	4	4	225	Accepted ADA
Magnolia Science Academy 7	3	2	200	Accepted ADA
Milagro Charter School	2	5	230.4	Accepted ADA
Romero, Monsenor Oscar Charter School	2	4	285	Accepted ADA
Montessori Charter School of Los Angeles	1	3	96.9	Accepted ADA
New Los Angeles Charter School	1	3	216	Accepted ADA
New West Charter Middle School	4	3	504	Requested Additional Info.
Nueva Esperanza Charter Academy	6	2	96	Accepted ADA
Ocean Charter School	4	3	269	Accepted ADA
Our Community School	3	1	276	Accepted ADA
Santa Rosa Charter Academy	5	4	96	Accepted ADA
Synergy Charter Academy	2	5	416.58	Accepted ADA
Synergy Kinetic Academy	7	5	340.1	Accepted ADA
Marshall, Thurgood Middle School	1	3	221	Accepted ADA
Triumph Charter Academy	6	2	288	Accepted ADA
Valley Charter Elementary School	2	3	229.2	Accepted ADA
Valor Academy Charter School	6	1	224	Accepted ADA
View Park Prep MS	1	3	254	Accepted ADA

10-11\_Prop\_39\_Applicant\_Data\_for\_Board\_Informative\_121409\_9517832.xls

Charter School Applicant	Board District	Local District	Total In-District ADA	Application Review Outcome
Westside Inclusive School House, Inc. (WISH Charter)	TBD	TBD	91	Request Incomplete
Wisdom Academy for Young Scientists	7	7	320	Accepted ADA

MONICA GARCIA, PRESIDENT  
YOLIE FLORES  
TAMAR GALATZAN  
MARGUERITE POINDEXTER LAMOTTE  
NURY MARTINEZ  
RICHARD A. VLADOVIC  
STEVEN ZIMMER



Administrative Office  
333 South Beaudry Avenue, 24<sup>th</sup> Floor  
Los Angeles, California 90017  
Telephone: (213) 241-7000  
Fax: (213) 241-8442

RAMON C. CORTINES  
SUPERINTENDENT OF SCHOOLS

December 17, 2009

**RE: 2010-11 Charter School Co-locations on District Campuses**

Dear LAUSD Staff and Community,

I hope you and your schools are well as we embark on the holiday break. Upon our return, the District will continue to implement the annual space identification process to generate facilities offers for charter schools under Education Code section 47614 ("Proposition 39") for the 2010-11 school year. I am writing to provide you with critical information regarding the District's obligations under Proposition 39 and the implementation process.

The District is committed to ensuring the instructional and facility needs of all public students are considered equitably. As in previous years I am implementing an Instruction Committee to review every offer prior to notifying charter school applicants. Charter schools are public schools and I believe the District has an obligation to provide *all* public school students safe, quality facilities that are conducive for learning. I appreciate your commitment and support of all public school students as we implement the 2010-11 Proposition 39 process.

With the passage of Proposition 39 in 2000, the District's obligation to provide facilities to charter schools changed fundamentally. Proposition 39 amended Education Code section 47614. Where, before the passage of Proposition 39, the District had a duty under section 47614 only to provide surplus space to charter schools, the District now has an obligation to share its facilities "fairly among all public school pupils, including those in charter schools." The District is to treat charter school students who reside within District boundaries as District students in the allocation of facilities offers.

In 2003, the Board of Education adopted a policy that defines fair treatment of non-charter and charter school students in the use of facilities and supports co-location on schools sites that have "underutilized facilities." In 2007, the District was sued by the California Charter Schools Association and two charter operators that, among other things, challenged the definition of underutilized facilities that could be made available to charter schools under the Board's policy. In order to avoid court ordered procedures that might be dramatically unfavorable with the District's facilities plans, the Board of Education directed that the case be settled. The settlement agreement does not give charter schools any more legal rights than they are entitled to under the current law but does reiterate the District's commitment to make annual facilities offers to requesting charter schools.

In November, the District received 81 charter school applications requesting approximately 20,000 seats for the 2010-11 school year. The majority of requests were for secondary seats. To ensure equity and consistency with the revised regulations governing Proposition 39, this year all co-location offers will be on the same grade-level campuses. District campuses will be required to share grade-appropriate areas such as restrooms, playfields and eating areas.

As previously mentioned, I have formed an Instruction Committee to review every offer. This committee will meet on a weekly basis starting in January to discuss the campuses under consideration. Prior to the deadline to extend offers, I will review the Instruction Committee's recommendation for charter school co-locations and provide final approvals. Your input in this process is imperative, and you will have the opportunity to speak directly with the Committee representatives when they visit your campus.

Please be advised of the following 2010 deadlines as prescribed by the revised Proposition 39 governing regulations:

February 1	Extend preliminary offers
April 1	Extend official offers
May 1	Charter schools respond to offers
10 Business Days Prior to First Day of Instruction	Charter schools occupy

These deadlines provide a limited timeframe to generate annual facilities offers. Please find below the District's space identification timeline:

**December**

- Local District meetings to review projected seat availability and make preliminary charter co-location matches.

**January**

- Campus visits to verify seat availability, space configuration and assess instructional impacts.
- Instruction committee reviews preliminary matches on a weekly basis after campus visits.

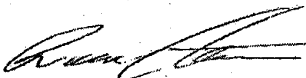
**February**

- Preliminary facilities offers are provided to applicant charter schools.

Thank you in advance for your cooperation throughout this process. If your school is under consideration for a charter co-location, your corresponding Local District Office will officially notify you. The Local Districts will facilitate campus visits to ensure all relevant information is gathered to verify space availability, potential co-location configuration and assessment of instructional impacts.

I recognize the instructional and operational challenges our schools will face in implementing Proposition 39 charter co-locations and have developed an implementation process to preserve the integrity of our academic programs and priorities to the extent possible while maintaining compliance with the Proposition 39 law. If you have any questions or concerns, please contact the Innovation and Charter Division at (213) 241-2665.

Sincerely,




Ramon C. Cortines

# EXHIBIT R

**LOS ANGELES UNIFIED SCHOOL DISTRICT**  
**Inter-Office Correspondence**

**INFORMATIVE**

**TO:** Members, Board of Education **DATE:** March 13, 2008

**FROM:** David L. Brewer 

**SUBJECT:** **PROPOSITION 39 SETTLEMENT SUMMARY, IMPLEMENTATION  
PROCESS, TIMELINE AND STATUS**

Many of you are working hard to accommodate co-locations of charter schools on your campuses. I understand the challenging circumstances under which these efforts are being made and greatly appreciate your efforts. I am writing to provide information that may help you to understand the District's obligations under Proposition 39 and describe the implementation process.

**The District's Legal Obligations**

With the passage of Proposition 39 in 2000, the District's obligation to provide facilities to charter schools changed fundamentally. Proposition 39 amended Education Code section 47614. Where, before the passage of Proposition 39, the District had a duty under section 47614 only to provide surplus space to charter schools, the District now has an obligation to share its facilities "fairly among all public school pupils, including those in charter schools." In addition, section 47614 now requires that the District "make available" to charter schools sufficient space to "accommodate all of the charter school's in-district students." Bottom line: the law requires the District to treat charter school students who reside within District boundaries as District students which must be accommodated within District facilities upon request.

In 2003, the Board of Education adopted a policy that defines fair treatment of non-charter and charter school students in the use of facilities and supports co-location on schools sites that have "underutilized facilities." In 2007 the District was sued by the California Charter Schools Association and two charter operators that, among other things, challenged the definition of underutilized facilities that could be made available to charter schools under the Board's policy. Because the District was not in compliance with the law and in order to avoid court ordered procedures that might be dramatically unfavorable with the District's facilities plans, the Board of Education directed that the case be settled.

**Settlement Summary**

The settlement agreement was carefully crafted by District counsel to maximize District flexibility in the assignment of classroom spaces. The settlement agreement does not give charter schools any more legal rights than those schools are entitled to under the current law.

Rather, the agreement arguably grants more rights to the District than it would be entitled to under a strict reading of the law in that the agreement allows the District to maintain the core principles of the Facilities Building Program. The District is protected from offering space to a charter school at a District-owned school site where doing so would:

1. Require a District school to convert to a multi-track year round calendar or to remain on a multi-track year-round calendar.
2. Require District students to involuntarily ride a bus to school.
3. Restrict the District school from the ability to maintain full-day kindergarten at schools where kindergarten is offered.
4. Require a District school to continue or begin a traveling teacher program, or increase the number of teachers on the campus forced to "travel" due to a lack of available classroom space, unless the number of teaching stations offered to a charter school may recognize the need for the charter school teachers to travel, as well.
5. Restrict the ability of a District school to maintain appropriate space and set-aside rooms for the maintenance of specified District programs and policies.

These and other stipulations in the settlement are guiding the 2008-09 Proposition 39 implementation process.

#### **Implementation Process**

Guided by the recent settlement and reviewed during three separate Superintendent's Cabinet meetings with the participation of all Local District Superintendents, the 2008-09 Proposition 39 implementation process occurs in ten steps:

1. Charter schools submit their Proposition 39 requests to the Charter Schools Division.
2. School Management Services produces a report of available seats within the District utilizing the following criteria:
  - The calculations include a reserve of 50 seats for elementary schools and 75 seats for secondary schools.
  - 2008-09 operating capacity is based on 2007 norm day data with reserve seats subtracted.
  - Secondary operating capacity is based on no traveling.

- Multi-track space is eligible and offered following the same calendar as the corresponding District campus.
  - Resident and mandatory integration program students (i.e., Permit with Transportation, Capacity Adjustment Program, NCLB Public School Choice and Magnet) are accommodated.
  - New open enrollment and permits such as Childcare, Work-related, Overcrowded and SAS will be evaluated at the Spring Enrollment Road show on a case by case basis.
  - Set-a-sides are held at their previously approved amount in the operating capacity calculations.
3. A team from School Management Services and the Facilities Division meets with each Local District Superintendent and their Directors prior to Spring Enrollment Roadshow to verify seat availability and make preliminary charter matches.
  4. The Local District Director coordinates with the Principal and leads a site review with the participation of the Facilities Division to verify space availability and configuration.
  5. The Charter Schools Division and Facilities Division verifies potential matches with charter school applicants to confirm their seat and location request.
  6. Preliminary matches are submitted to the Superintendent for review and official approval.
  7. The Charter Schools Division extends official offers to charter schools on April 1.
  8. The Charter School Division reports to the Board of Education for approval of facility projects for accepted offers.
  9. Facilities Division executes a one-year use agreement with charter operator and works with on-site administrators to make physical accommodations for charter co-location.
  10. Charter school co-locates on campus for upcoming academic year.

**2008-09 Academic Year Proposition 39 Timeline**

Beginning in October 2007

- Existing charters submit Proposition 39 requests to Charter Schools Division.

November 2007 – January 2008

- School Management Services generates seat availability report.

January 2008

- New charters submit Proposition 39 requests to Charter Schools Division.

February-March 2008

- School Management Services and the Facilities Division meet with each Local District Superintendent and Directors to verify space availability and make preliminary charter matches.
- The Local District Director coordinates with the Principal and leads a site review with the participation of the Facilities Division to verify space availability and configuration.

February-April 2008

- Spring Enrollment Road Show occurs.

April 2008

- Official offers are extended to charter schools on April 1.

May 2008

- Charter schools accept or reject offers by May 1.
- Board approves facility projects for accepted offers.

May-September 2008

- Facility accommodations are made to prepare campus for charter co-location.

September 2008

- Charter co-locates on campus.

Status

- As of March 3, all Local District meetings have occurred.
- Site reviews are in process.
- No charter offers have been extended.

If you have any questions or need additional information, please call Greg McNair at (213) 241-7646.

DLBIII

c: Jefferson Crain  
Maribel Medina  
Randy Ross  
Jerry Thornton

# EXHIBIT F

New West Charter Middle School v.  
LAUSD  
 BS 115979

Tentative decision on petition for writ of  
 mandate: granted

Petitioner New West Charter Middle School ("New West") seeks a writ of traditional mandamus to compel Respondent Los Angeles Unified School District ("LAUSD" or the "District") to comply with its non-discretionary duties under Education Code section 47614 to provide reasonably equivalent school facilities. The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

#### **A. Statement of the Case**

New West commenced this proceeding on July 21, 2008, seeking to compel LAUSD to fulfill a mandatory obligation to provide its facilities to New West under Education Code §47614 and Proposition 39, enacted in November 2000.

#### **B. Applicable Law**

A party may seek to set aside an agency decision by petitioning for either a writ of administrative mandamus (CCP §1094.5) or of traditional mandamus. CCP §1085. A traditional writ of mandate under section 1085 is the method of compelling the performance of a legal, ministerial duty. *Pomona Police Officers' Assn. v. City of Pomona*, (1997) 58 Cal.App.4th 578, 583-584. A petition for traditional mandamus is appropriate in all actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station..." CCP §1085. "Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy; the respondent has a duty to perform; and the petitioner has a clear and beneficial right to performance," *Pomona Police Officers' Assn.*, 58 Cal.App.4th at 584 (internal citations omitted). No administrative record is required for traditional mandamus. The court must uphold the agency's action unless it is "arbitrary and capricious, lacking in evidentiary support, or made without due regard for the petitioner's rights." *Sequoia Union High School District v. Aurora Charter High School*, (2003) 112 Cal.App.4th 185, 195.

#### **C. Statement of Facts**

New West is a California public charter school approved by the State Board of Education ("SBE"), and operated as a California non-profit corporation in accordance with Education Code section 47604. New West is a highly successful public charter middle school located in West Los Angeles. Its current enrollment exceeds 300, all residing within the bounds of LAUSD, and could be legally increased to 600 students under its charter if it had space in which to educate them. New West had 689 applicants for less than 80 spaces available for fall 2008.

Charter schools generally, and New West specifically, have been highly successful. The Academic Performance Index ("API"), which is used by the State of California to evaluate a school's overall academic performance, reveals that charter schools operating in LAUSD are outperforming traditional public schools at the middle and high school levels. At the middle school level, LAUSD schools had an API of 634, far below the charter schools' median API of 729. New West's most recent API score of 835 is almost 200 points higher than LAUSD's median scores. Last year, New West was ranked in the top ten-percent of similar middle schools in the entire state, and was among the highest-performing middle schools in the LAUSD.

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Given this success, many parents have endeavored to place their children at New West and the other severely seat-limited charter schools. New West currently has a waiting list of about 400 students for next school year, out of about 689 applicants for Fall 2008. Students are not selected as the "cream of the crop," but rather are selected by a public random drawing (i.e., lottery) from among those seeking to attend.

On October 1, 2007, New West submitted a request to LAUSD pursuant to Ed. Code section 47614 for facilities to house approximately 300 middle school students for the 2008/2009 school year.

On April 1, 2008 LAUSD sent a letter to New West offering facilities at the District's Fairfax High School ("Fairfax") to co-locate the Charter School, which LAUSD stated was to meet its obligations under Proposition 39. On April 30, 2008, New West accepted the offer effective immediately, reserving its right to challenge its sufficiency. Later that same day, LAUSD faxed a letter to New West purporting to "withdraw" its Proposition 39 facilities offer made more than four weeks earlier.

Since April 30, 2008, New West has attempted to persuade the LAUSD to comply with its offer and the law, in an effort to avoid this litigation. LAUSD has continued to refuse to comply with Proposition 39.

#### **D. Analysis**

##### **1. The Duty to Accommodate a Charter School**

In November 2000, California voters passed Proposition 39, which amended Ed. Code section 47614. Also known as the "Smaller Classes, Safer Schools and Financial Accountability Act," Proposition 39 requires school districts to provide public charter schools and the students who opt to attend those public charter schools with "reasonably equivalent" facilities to those they would have if they attended district-run schools." Prior to the passage of Proposition 39, a charter school's right to use school district facilities was "very limited initially; a charter school was entitled to use district facilities only if that would not interfere with the district's use of them. This restriction was effectively eliminated by Proposition 39." Ridgecrest Charter School v. Sierra Sands Unified School District, (2005) 130 Cal.App. 4th 986, 998-999. Now, a charter school's right to equitably share school district facilities is unequivocal and mandatory, even if it might cause some "disruption and dislocation" of district students. *Id.* at 1000.

The relevant portions of Proposition 39, as codified in the Education Code are as follows: "[t]he intent of the people in amending Section 47614 is that public school facilities should be shared fairly among all public school pupils, including those in charter schools." Ed. Code §47614(a). "Each school district shall make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district. Facilities provided shall be contiguous, furnished, and equipped, and shall remain the property of the school district. The school district shall make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate, and shall not move the charter school unnecessarily." Ed. Code §47614(b) (emphasis added).

"Proposition 39's stated intent is 'that public school facilities should be shared fairly among all public school pupils, including those in charter schools.'" Sequoia Union High School

District v. Aurora Charter High School, (2003) 112 Cal.App.4th 185, 191. The statutory language imposes a mandatory duty on districts to make available "...facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending public schools of the district." Bd. Code § 47614(b). Thus, district-operated facilities "shall" be shared among all public school students, including those who attend charter schools. Ridgecrest Charter School, *supra*, 130 Cal.App. 4th at 1002; Sequoia Union High School District, *supra*, 112 Cal.App.4th at 196.

The SBE has adopted regulations implementing Proposition 39, operative as of August 29, 2002. Sec 5 CCR §11969 *et seq.*<sup>1</sup> These regulations specify procedures and time lines for Proposition 39 facilities requests from charter schools. The regulations require charter schools to submit a facilities request to the school district "by October 1 of the preceding fiscal year." 5 CCR §11969.9(b). The regulations detail the information that must be provided to the district. "The school district shall review the projections and provide the charter school a reasonable opportunity to respond to any concerns raised by the school district regarding the projections." 5 CCR §11969.9(d). "The school district shall prepare a preliminary proposal regarding the space to be allocated to the charter school and the associated pro rata share amount and provide the charter school a reasonable opportunity to review and comment on the proposal." 5 CCR §11969.9(d). "The school district must provide a final notification of the space offered to the charter school by April 1 preceding the fiscal year for which facilities are requested. The school district notification must specifically identify: (1) the teaching station and non-teaching station space offered for the exclusive use of the charter school and the teaching station and non-teaching station space to be shared with district-operated programs; (2) for shared space, the arrangements for sharing; (3) the in-district classroom ADA assumptions for the charter school upon which the allocation is based and, if the assumptions are different than those submitted by the charter school, a written explanation of the reasons for the differences; (4) the pro rata share amount; and (5) the payment schedule for the pro rata share amount, which shall take into account the timing of revenues from the state and from local property taxes." 5 CCR §11969.9(e). The charter school must notify the school district in writing whether or not it intends to occupy the offered space. The notification must occur by May 1 or 30 days after the school district notification, whichever is later. 5 CCR §11969.90.

## **2. New West Timely Sought Space and Accepted LAUSD's Offer**

On October 1, 2007, New West timely submitted to LAUSD its complete request for facilities to house approximately 300 middle school students for the 2008-2009 school year, as described in its charter, pursuant to section 47614 and 5 CCR 11969(b). LAUSD conducted site reviews at each of its campuses to determine space availability for all of its Proposition 39 offers, district-wide. After that extensive review, on April 1, 2008, LAUSD sent a letter to New West offering the exclusive use of twelve "teaching stations" and one "non-teaching station" at Fairfax in an effort to meet the facility-sharing requirements of Proposition 39. See 5 CCR

<sup>1</sup>The regulations have been amended, but the amendments do not take effect until next year.

§11969.9(e). On April 24, 2008, LAUSD sent a letter to New West outlining the fees LAUSD expected to charge for the facilities and provided a sample facilities use agreement the District expected New West to execute for use of the facilities. This letter also noted that New West "must accept or reject the Proposition 39 offer made by LAUSD by May 1, 2008. If LAUSD does not receive an acceptance or rejection from you by May 1, 2008 the offer will be considered rejected."

New West accepted LAUSD's offer on April 30, 2008, by fax and by hand-delivering a notice of intent to occupy the facilities offered by LAUSD for the 2008-09 school year, all in accordance with the applicable regulations. See 5 CCR §11969.9(i). Later that day, but after New West delivered its notice of intent to occupy to LAUSD, the New West received a one paragraph letter from LAUSD Senior Deputy Superintendent Ray Cortines purporting to "withdraw[]" the offer made to New West Charter of thirteen classrooms at Fairfax High School.<sup>12</sup>

Plainly, as a matter of contract law, the parties had a binding contract. LAUSD made an offer and New West timely accepted it. The fact that New West reserved its right to challenge any aspect of the offer that was unlawful does not affect this acceptance. The purported "withdrawal" letter was therefore legally meaningless as a matter of contract law.

The withdrawal was also meaningless under Proposition 39. Neither that law, nor any other provision of the Charter Schools Act, provides LAUSD with any authority to "withdraw" its mandatory obligation to share facilities with New West. The "withdrawal" only means that LAUSD failed to perform its mandatory duty under Proposition 39.<sup>3</sup>

### **3. The Opposition Contains a Parade of Unproven Horribles**

In opposition, LAUSD does not offer any legal authority for its action. Instead, LAUSD presents 72 pages of declarations from its superintendent, chief of facilities, charter planning manager, associate general counsel, new construction manager, the principal of Fairfax, and outside counsel. The court has read all of these declarations, which consist of a litany about the "web" of statutory and other legal duties governing LAUSD, its size (700,000 students, 45,000 teachers, and 900 schools), the District's historical and perhaps existing overcrowding,<sup>4</sup> its evaluation of charter school space requests, its own schools' operating capacities, its effort to make charter offers based on geographical component, the problems at Fairfax, the need for small learning communities ("SLC") at Fairfax to maintain its accreditation for state college entrance requirements, the difficulties with portable classrooms, the problems with busing students, the problems with multi-track schedules, its efforts to meet classroom size reduction

<sup>12</sup>It appears that it succumbed to pressure from the teachers' union, which does not care for charter schools, which had staged a protest about the offer.

<sup>3</sup>LAUSD argues that New West has an adequate remedy at law of damages for its breach of contract claim. No such claim has been pled. The breach of contract is relevant only as evidence that LAUSD has violated its legal duty.

<sup>4</sup>New West presents evidence that LAUSD is facing declining enrollment and an excess of space, causing it to close schools.

goals, its consent decree in another case concerning maximum enrollments, construction bonds and other funding, implementation of full-day kindergarten programs, and the teacher's union opposition to "teacher traveling."

The sheer scope and number of matters discussed in these declarations demonstrates the weakness of LAUSD's position. Very little of the evidence even concerns New West. The portion that does is clearly inadequate. Thus, the Declaration of Ana Teresa Fernandez ("Fernandez") refers to a "provisional offer" to New West. There was nothing provisional about the offer made to New West pursuant to Prop. 39. That some teachers did not like it is irrelevant.<sup>5</sup>

The Declaration of Edward Zubiate purports to link accommodation of New West at Fairfax with loss of SLC's on campus without an explanation as to why. He also argues that it will be disruptive to the school's Master Calendar, which may be true, but not controlling since New West's right to equitably share facilities is mandatory, even if it might cause some "disruption and dislocation" of district students. Ridgecrest Charter School v. Sierra Sands Unified School District, *supra*, 130 Cal.App. 4th at 1000. After a lengthy investigation, LAUSD believed when it made the offer that Fairfax was available for New West's accommodation. There simply is insufficient evidence that it was wrong.

Even if *arguendo* Fairfax was not available, LAUSD has a duty to accommodate New West somewhere. The District presents only speculation and conclusions that it cannot do so without any evidence. The best it can offer is the Declaration of David Brewer, the District's Superintendent, which states that accommodation of charter schools "generate[s] ripple effects adversely affecting LAUSD students all across the District." ¶11. Of course, charter students are LAUSD students too. They, too, are entitled to the District's facilities. LAUSD's conclusion that location of charter students in an existing school would favor "charter school students over non-charter school students" is likewise unproven. ¶23.

In short, LAUSD has violated its statutory obligation to accommodate New West students. It has also breached a contract to do so.<sup>6</sup>

#### 4. Equitable Defenses

LAUSD argues that New West is guilty of laches, observing that it waited close to three months after LAUSD's purported withdrawal of the offer to seek relief. Classes have begun at

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<sup>5</sup>When Fernandez says that the offer was "on hold" as of April 22, 2008, and New West was informed of this fact, this is inconsistent with Fernandez's own email to New West of April 28, which stated that the hold only related to classroom configuration.

<sup>6</sup>LAUSD suggests that New West lacks standing to make this claim. It argues that the SBE chartered New West, and it has not approved any change in location for it. LAUSD cites no authority that New West's obligations to the SBE bear on LAUSD's statutory obligations to accommodate New West's students. See Sequoia Union High School District v. Aurora Charter High School, (2003) 112 Cal.App.4th 185, 191 (school district's obligation to accommodate is to each charter school operating in the the district). LAUSD's similar argument that SBE is an indispensable party because it, not LAUSD, chartered New West fails for the same reason.

Fairfax, and it would be inconvenient and burdensome for LAUSD to fulfill the Proposition 39 facilities request.

New West's only response is to suggest that it was negotiating with LAUSD, hoping it would realize its mistake and honor its obligations. Given LAUSD's patently unreasonable and unlawful conduct, New West cannot be blamed for hoping to avoid litigation. LAUSD shirked its statutory obligation and cannot rely on an equitable defense of delay.<sup>7</sup>

In any event, LAUSD had since October 1, 2007 to figure out how to accommodate New West's Proposition 39 request, and has had since May 1, 2008 to assess how it would meet this obligation if compelled by litigation. If the District has failed to prepare a contingency plan, that failure is its own.

In a related argument, LAUSD points out that New West has renewed its lease and does not have need for LAUSD space. LAUSD does not acknowledge, however, that the lease renewal only occurred because it refused to provide accommodation. LAUSD cannot bootstrap New West's effort to mitigate the damage caused by LAUSD's actions into a reason to deny relief.

#### E. Conclusion

The Petition for Writ of Mandate is granted. LAUSD is ordered to fulfill its Proposition 39 duty, and its offer to New West, for the facilities offered at Fairfax High or other acceptable location for the school year 2008-09.<sup>8</sup>

New West's counsel is ordered to prepare a proposed judgment and writ of mandate, serve them on the opposing parties for approval as to form, wait 10 days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment and writ along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for October 3, 2008.

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It bears noting that all of New West's students reside within LAUSD, and are entitled to LAUSD's facilities as much as any student attending a LAUSD school.

LAUSD points out numerous duplicates supporting New West's facilities request. LAUSD is correct that it is obligated to provide facilities only for the number of students reasonably projected in New West's application. If New West does not need the requested facilities, no writ should issue compelling LAUSD to provide them. The court will discuss this issue with counsel at hearing.

85  
**FILED**  
LOS ANGELES SUPERIOR COURT

OCT 3 2008  
JOHN A. CLARKE, CLERK  
*A. Fajardo*  
BY A. FAJARDO, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
CENTRAL DISTRICT

NEW WEST CHARTER MIDDLE SCHOOL,

Petitioner,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT;  
BOARD OF EDUCATION OF THE LOS  
ANGELES UNIFIED SCHOOL DISTRICT; and  
DAVID L. BREWER III, in his capacity as  
Superintendent of Schools,

Respondents.

Case No.: BS115979

~~PROPOSED~~ JUDGMENT  
GRANTING PEREMPTORY WRIT OF  
MANDATE AND ORDER

On September 5, 2008, in Department 85 of the above-entitled Court, the Honorable James C. Chalfant presiding, the Court heard the Petition for Writ of Mandate filed by Petitioner New West Charter Middle School ("New West" or "Petitioner") against the Respondents Los Angeles Unified School District ("LAUSD"); Board of Education of the LAUSD; and David L. Brewer III, in his capacity as Superintendent of Schools (collectively the "Respondents").

John C. Lemmo of Procopio, Cory, Hargreaves & Savitch, LLP, and Paul C. Minney of Spector, Middleton, Young & Minney, LLP appeared on behalf of Petitioner; Gregory G. Luke of Strumwasser & Woocher LLP and Mark Fall of the LAUSD's Office of General Counsel appeared on behalf of the Respondents. After hearing the evidence and the arguments of counsel and after considering all papers filed with the Court, and the cause having been argued and

~~PROPOSED~~ JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE; Case No.: BS115979

001294

1 submitted for decision, the Court issued its *Decision on Petition for Writ of Mandate: Granted*,  
2 attached hereto as *Exhibit 9*, which provides the Court's findings of fact and application of law in  
3 this action, and is fully incorporated herein.

4 **IT IS ORDERED, ADJUDGED AND DECREED:**

5 1. The Petition for Writ of Mandate is GRANTED.

6 2. A Peremptory Writ of Mandate shall issue ~~(in the form attached hereto as Exhibit~~  
7 ~~2) requiring the Respondents and all persons and entities acting in concert with Respondents to~~  
8 fulfill their duties and obligations to Petitioner under Education Code section 47614 and to  
9 ~~immediately provide New West with 13 classrooms at Fairfax High School to house 285 students~~  
10 ~~as described in the LAUSD's Proposition 39 final offer dated April 1, 2008, or at another location~~  
11 ~~acceptable to New West.~~ *or other acceptable location for the school*  
12 *year 2008-09.*

13 ~~3. The Respondents are ordered to immediately provide 13 classrooms in full~~  
14 compliance with Education Code section 47614 and regulations applicable for the 2008-2009  
15 school year, and in compliance with the terms stated in the LAUSD's April 1, 2008 Offer, as  
16 follows:

- 17 a. The facilities shall be located at Fairfax High School or other single school  
18 site acceptable to Petitioner;  
19 b. The facilities shall include exclusive use of 12 "teaching station"  
20 classrooms, and the exclusive use of one "non-teaching station" classroom;  
21 c. The Respondents determined in the April 1, 2008 offer that the "pro rata  
22 share" charge for New West shall be no more than \$0.16 per square foot,  
23 or \$6,378 per annum. New West shall pay that amount for the use of the  
24 facilities;  
25 d. New West shall maintain and operate the facility, furnishings, and  
26 equipment in accordance with LAUSD standards as required by 5 CCR  
27 §11969.9(h)(2);  
28 e. The Respondents shall not impose any charges or requirements upon New  
West that are not expressly required by Education Code section 47614 and

1 the applicable regulations, including but not limited to any operation or  
2 maintenance charges;

3 f. The facilities shall be clean, furnished and equipped for use as middle  
4 school classrooms.

5 g. The Respondents shall provide reasonably equivalent shared facilities on  
6 the school site, which shall include but are not limited to: covered  
7 lunch/eating area for students, library, media center/computer lab,  
8 playfields, restrooms, parking spaces for staff, and staff breakroom, and a  
9 reasonable schedule or other arrangements for shared use. Respondents  
10 shall negotiate with Petitioners in good faith regarding such sharing  
11 arrangements.

12 h. The Respondents and any persons or entities acting in concert with  
13 Respondents are ordered to not interfere with New West's use and  
14 enjoyment of the facilities. Respondents shall distribute a copy of the  
15 Court's order to its employees at the school site.

16 i. Respondents shall comply with the Writ of Mandate by October 2, 2008.

17 4. The Respondents are ordered to fully comply with Proposition 39 and the  
18 Implementing Regulations as to New West ~~now and going forward.~~ *for the 2008-09 school year.*

19 5. The Court retains jurisdiction to consider ~~New West's~~ *whether* damages pursuant to Code  
20 of Civil Procedure section 1095, by noticed motion or other applicable procedure.

21 6. ~~Petitioner is the prevailing and successful party, and this Court retains jurisdiction~~ *The Court retains jurisdiction to determine whether*  
22 ~~Petitioner is entitled to costs and reasonable attorneys' fees by noticed motion.~~ *Petitioner is entitled to costs and reasonable attorneys' fees by noticed motion.*  
23 ~~Petitioner is awarded its costs of suit, to be determined pursuant to California~~ *fees by noticed motion or other applicable procedure.*  
24 Rules of Court, Rule 3.1700.

25 ~~8. The Court orders that should an appeal be taken from this Judgment and Writ of~~  
26 Mandate, "the appeal shall not operate as a stay of execution" pursuant to this Court's authority  
27 under Code of Civil Procedure section 1110b. The Petitioner has made a sufficient showing in its  
28 Verified Petition and other arguments and evidence submitted to this Court that a stay would

1 ~~result in the denial of any relief to Petitioners.~~

2 9. The Court shall exercise continuing jurisdiction over this action to ensure that  
3 LAUSD complies with this Judgment and Writ of Mandate.

4  
5 Dated: 10/1/08

7 - Chalfant  
6 Hon. James C. Chalfant  
7 Judge of the Superior Court  
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OCT - 3 2008 Writ of Mandate

FILED

New West Charter Middle School v.  
LAUSD  
BS 115979

Tentative decision on motion to enforce  
writ: granted

NOV 21 2008

John A. Clarke, Executive Officer/Clerk  
By A. Saez, Deputy  
ANNETTE CAJADO

Petitioner New West Charter Middle School ("New West") seeks an order to enforce the writ of mandamus issued by the court, compelling Respondent Los Angeles Unified School District ("LAUSD") to comply with its non-discretionary duties under Education Code section 47614 to provide reasonably equivalent school facilities. The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

**A. Statement of the Case**

New West commenced this proceeding on July 21, 2008, seeking to compel LAUSD to fulfill a mandatory obligation to provide its facilities to New West under Education Code §47614 and Proposition 39, enacted in November 2000.

**B. Applicable Law**

The court that issues a writ of mandate retains continuing jurisdiction to make any order necessary to its enforcement. CCP §§1097, 1105; County of Inyo v. City of Los Angeles, (1977) 71 Cal.App.3d 185, 205; *see also*, Professional Engineers in Cal. Govt. v. State Personnel Bd., (1980) 114 Cal.App.3d 101, 109. This authority is codified in California Code of Civil Procedure section 1097, which provides, in part, that when a peremptory writ has issued and is disobeyed, the court "... may make any orders necessary and proper for the complete enforcement of the writ," but it is also an inherent power of the court. Kings v. Woods, (1983) 144 Cal. App.3d 571, 578.

Where the Writ remands the matter to Board with directions to proceed in a certain manner, and Board's Return states that the Court's mandate has been carried out, a petitioner may challenge the validity of that claim. CCP §1097. The petitioner may make either an oral or written motion requesting the court order the respondent to reconsider the writ further, or the court may make such a motion *sua sponte*. County of Inyo, supra, 71 Cal. App. 3d at 188.

**C. Analysis**<sup>1</sup>

On September 5, 2008, the court granted New West's Petition. On October 3, 2008, the Court issued its Writ of Mandate. LAUSD was ordered to fulfill its Proposition 39 duty, and its offer to New West for the facilities offered at Fairfax High or other acceptable location for the school year 2008-09 in compliance with Education Code section 47614 and its implementing regulations. The court ordered LAUSD "to fulfill its Proposition 39 duty," and ruled that "New West's right to equitably share facilities is mandatory, even if it might cause some 'disruption and dislocation' of district students."

LAUSD was required to provide space for 284 middle school students that was "reasonably equivalent" to the facilities it provides its "own" middle school students at "comparison schools" selected in accordance with the Implementing Regulations.

<sup>1</sup>New West's request for oral testimony is denied.

001576

### 1. Proximity to the Requested Area

LAUSD is required "to make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate." Ed. Code §47614(b). New West's October 1, 2007 Request for Proposition 39 Facilities stated that its student population comes from the neighborhoods surrounding LAUSD's Local District 7. The Request also sought "any potential sites" located in an area bounded by Century Blvd. (LAX) to the south, Sunset Blvd. to the north, Pacific Coast Highway to the west, and La Cienega to the east."

LAUSD officials assigned New West to Logan Elementary. This location is in Local District 7. While it is some 15 miles from New West's present school location, the school's present location is not the site for which LAUSD must endeavor to provide reasonably proximate space. Rather, it is the location of New West's students, and they are indisputably in Local District 7. LAUSD could comply with its obligations by providing space in District 7 or near New West's school in District 3.

### 2. Group Comparison

LAUSD had a duty to offer New West facilities reasonably equivalent to those the students would be in if attending other public schools of the district. Ed. Code §47614(b). This offer should be made based on comparison group of schools under Proposition 39. Ed. Code §47614(b); 5 Cal. Code Regs. §11969.3(a). A comparison is necessary because the facilities proposed must be reasonably equivalent (in both capacity and condition) to the middle school facilities enjoyed by students in the LAUSD schools that New West's students would otherwise attend. Ed. Code §47614(b); 5 Cal. Code Regs. §11969.3(a).

The first task to be performed is to identify the comparison group. "The comparison group shall be the school-district operated schools with similar grade levels [i.e. middle schools] that serve students living in the high school attendance area ... in which the largest number of students of the charter school reside." 5 Cal. Code Regs. §11969.3(a)(2).

The comparison group may be determined from New West's October 2007 application, which stated that "the student population of up to 600 students will come from the surrounding neighborhoods of Local District 7."

New West points out that the Request included hundreds of student applications indicating where the students reside, and the vast majority come from District 3. Specifically, the applications included a form with the following line: "[P]lease list the school within the District your son/daughter would otherwise attend." The high school attendance area where the largest number of students of New West's 312 students reside is University High School (121 New West students reside in that area), located in District 3.<sup>2</sup> The next largest group of New West students live in the attendance areas for Venice High School, Hamilton High School, and Palisades High School, in that descending order. All of these schools are in District 3. New West states that it intended to draw students from South Los Angeles, but has not received many letters of intent from that region.

The discrepancy perhaps lies in New West's projection of the South Los Angeles

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<sup>2</sup>Apparently, the school facilities are generally inferior in District 7 to those in District 3.

location from which "up to 600 students will come" and the actual location of New West's 312 students. In any event, LAUSD is entitled to rely on New West's own statements about the location of its students and for the comparison group of middle schools, which are "Bethune, Drew, Edison, Compers, Markham and Muir Middle School." It was not required to add up the information in the student forms attached to the application.

However, LAUSD did not perform a comparison group analysis for District 7 middle schools. Instead, it simply investigated whether there were contiguous classrooms available at any location in South Los Angeles and in the alternative area of District 3. This "investigation" consisted of LAUSD's declarant, Ana Teresa Fernandez ("Fernandez"), asking unnamed "colleagues" whether they knew of any school site with 13 empty classrooms. This "investigation" identified Logan Elementary, located in an unknown District, which became available only because another charter school declined it in September. On October 6, 2008, LAUSD issued what it called an "offer" of space to New West at Logan Elementary School.

This effort does not meet the standards prescribed by Ed. Code section 47614(b) and the implementing regulations. Nor is it consistent with the court's order. LAUSD contends that Logan Elementary is the only set of contiguous classrooms in west central Los Angeles available to accommodate New West's 285 students. Based on availability, LAUSD contends that a comparison of a group of schools in District 7 was not required. It contends that it cannot "kick students out of school to accommodate New West in the middle of the school year."

LAUSD does not recognize that the reason why a serious disruption of students and teachers could even be necessary in the middle of the school year is because of its own failure to accommodate New West by providing the Fairfax space it promised. LAUSD should hardly be entitled to benefit from its wrongdoing. While students and teachers may be the innocent victims, some disruption and dislocation must be tolerated if necessary to provide a reasonable provision of space to New West. While a major disruption is not required, LAUSD did not even investigate the availability of space that could require some disruption of another school. For example, a school like Fairfax may have to forego a particular teaching program in order to accommodate New West. It simply is not enough to state that Logan Elementary is the only unused space in LAUSD.

### 3. Compliance with the Law and the Writ

If Logan Elementary is in a location in District 7 or near New West's school in District 3, and if it meets the requirements that a comparison of middle schools in that District would provide, then it does not matter whether LAUSD performed a truncated analysis.

It is neither. Logan Elementary is in District 4. New West also says that the space offered does not meet the requirements of a comparable middle school. On October 13, 2008, after repeated requests by the principal of New West, LAUSD allowed New West representatives to see the space available at Logan Elementary School. The disparity between the district-operated elementary school classrooms, library, computer lab, multi-purpose auditorium, and cafeteria area, and the bare classrooms and facilities offered to New West was stark. LAUSD staff explained that New West's middle schools students would have no access to any library, computer lab, multi-purpose auditorium, or cafeteria areas. New West's designated student "eating area" was outdoors and barely separated by a wall from LAUSD's garbage dumpsters, which have a bad odor.

LAUSD disputes these facts. Fernandez says that during the site visit to Logan Elementary she offered use of the library, computer lab, multi-purpose auditorium, cafeteria, teacher lounge, and playgrounds, and assured New West that this use would be accommodated and coordinated with Logan Elementary's principal. She states that the facilities offered are reasonably equivalent to, and far exceed, those available to middle school students in South Los Angeles.

In reply, New West's Principal, Sharon Weir ("Weir"), states that she was told by Fernandez and the Logan Elementary principal that the auditorium was not available for New West because another charter school was sharing it with Logan, the cafeteria was not available to New West because Logan students used it all day and New West would have to use old wooden tables abutting a trash area. New West would not be allowed to use the teacher's lounge or an unused grassy area for physical education. New West could not use the staff parking garage and its teachers would have to park on the street. New West could use a blacktop area only when Logan was not using it, which was most of the day. All of the portable classrooms were in poor condition, with broken windows, not working air conditioning, and damaged ceilings and doors. New West's students could not use larger in-building bathrooms, and would have to use the bathrooms in the portable classrooms designed for very small children and porta-potties for larger children and adults.

Quite simply, LAUSD's claim that any extensive shared use of facilities was offered during the site visit is not believable. Nothing in the written offer indicates the availability of these teaching amenities. Th October 6 says nothing about shared space. Facilities such as a library, computer lab, auditorium, and cafeteria would necessarily have to be shared. Given the deception that has marked LAUSD's conduct towards New West, its contention is not credible.

Given that the court accepts the truth of Weir's declaration, the facilities which were offered at Logan Elementary could not possibly meet the requirements that a comparison of middle schools in that District would provide. LAUSD is correct that New West has not provided any evidence of what that comparison would show. However, LAUSD was obligated to perform the comparison, and has not done so. The facilities offered are not an equal sharing with Logan Elementary students, and the fair inference is that they would not meet the requirements of a comparison of District 7 middle schools.

#### **D. Conclusion**

LAUSD has not complied with its legal obligations by providing an adequate offer of space in District 7 or District 3 based on a comparison group analysis of facilities in District 7. LAUSD's obligations under Proposition 39 run from school year to school year. LAUSD has delayed meeting its mandatory duty by more than six months. The motion to enforce the writ is granted.

As a remedy, New West asks for immediate compliance or in the alternative its actual damages for LAUSD's failure to comply with its April 1, 2008 offer. "If judgment be given for the applicant, the applicant may recover the damages which the applicant has sustained... as may be determined by the court...." CCP § 1095. "Damages may appropriately be awarded in mandamus proceedings." Warner v. North Orange County Community College District, (1979) 99 Cal.App.3d 617, 628. It appears that immediate compliance may not be feasible. If New West wishes to pursue damages in lieu of compliance, the court will require additional briefing

concerning the measure and amount of damages.

Code of Civil Procedure section 1097 also provides that where an agency, board or person has "refused or neglected to obey [the writ], the Court may, upon motion, impose a fine not exceeding one thousand dollars" upon that agency, board, or person. LAUSD has paid only lip service to its legal obligations, and has effectively refused to comply with the writ. LAUSD had an obligation to identify and provide reasonably equivalent facilities in reasonable proximity to the area where New West wished to locate.

LAUSD did not perform this task. LAUSD will be fined the sum of \$1,000 pursuant to CCP section 1097, payable within 30 days and collectible as a judgment, due to its deliberate refusal to comply with the writ.

4/11/2007

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 11/21/08

DEPT. 85

HONORABLE JAMES C. CHALFANT

JUDGE A. FAJARDO

DEPUTY CLERK

HONORABLE  
#7

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

J. DE LUNA, C.A.

Deputy Sheriff

J. CAMPBELL, CSR #11859

Reporter

9:30 am BS115979

Plaintiff JOHN C. LEMMO [X]

Counsel PAUL C. MINNEY [X]

NEW WEST CHARTER MIDDLE SCHOOL

VS

Defendant GREGORY G. LUKE [X]

LOS ANGELES UNIFIED SCHOOL

Counsel MARK FALL [X]

DISTRICT ET AL

## NATURE OF PROCEEDINGS:

MOTION OF PETITIONER, NEW WEST CHARTER MIDDLE SCHOOL,  
FOR ORDER FOR THE COMPLETE ENFORCEMENT OF WRIT  
PURSUANT TO CODE OF CIVIL PROCEDURE 1097; OR IN THE  
ALTERNATIVE, MOTION FOR AWARD OF MONETARY DAMAGES  
PURSUANT TO CODE OF CIVIL PROCEDURE 1095

The matter is called for hearing.

Counsel read the Court's tentative ruling.

After argument of Counsel, the Court rules in  
accordance with it's tentative which is adopted and  
filed as the final ruling of the Court.

The Motion to Enforce Writ is granted. LAUSD will  
be fined \$1,000.00 pursuant to CCP Section 1097,  
payable within 30 days and collectible as a judgment,  
due to its deliberate refusal to comply with the  
writ.

A HEARING RE: FUTURE DAMAGES is set on  
JANUARY 27, 2009 at 9:30a.m. in this department.

The briefing schedule is to be governed by Code of  
Civil Procedure Section 1005 unless Counsel  
stipulate otherwise.

Notice is waived.

Page 1 of 1 DEPT. 85

MINUTES ENTERED 11/21/08 COUNTY CLERK
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001581

# EXHIBIT G

**dailynews.com**

## Schools say LAUSD not abiding by legal settlement

By Connie Llanos, Staff Writer

Posted: 03/30/2010 09:07:06 AM PDT

Updated: 03/30/2010 09:32:07 AM PDT



42 students crowd a third-grade classroom at Ivy Academia Charter School Sunnybrae Campus on the Sunnybrae Elementary School campus in Winnetka. (Hans Gutknecht/Staff Photographer)

Two years after settling a lawsuit was supposed to give them access to Los Angeles Unified campuses, local charter schools are bracing for another legal battle that would force the district to turn over the facilities.

In a 21-page letter sent this month to LAUSD lawyers, the California Charter School

Association demanded that the district offer more space to local charters by Thursday's state-mandated deadline or face legal challenges.

"It is our sincere hope that these matters will have swift and significant resolution," the letter said. "Otherwise, (we) will have no choice but to seek judicial intervention."

According to the charter association's interpretation of Proposition 39, LAUSD must offer space to all charter schools who request it. The measure, approved by voters in 2000, said district facilities must be shared "fairly among all public school pupils, including those in charter schools."

Charter schools are publicly funded, yet independently operated campuses whose popularity exploded in the last decade.

California charter leaders say LAUSD has one of the worst track records in the state for providing space to charters.

"There is a long record of this district being unable or unwilling to meet their Prop. 39 obligations," said CCSA president Jed Wallace.

"We are working very proactively with the district. .. But it is in that larger context of many years of working patiently with the district that

we find ourselves in a situation that is still clearly unacceptable."

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As of Monday, LAUSD had offered space to 38 of the 81 charters that had filed requests – a response that charter school advocates call unacceptable.

The association also has complaints about the location and quality of the facilities that have been offered. Some have been offered space as far as 16 miles from their recruitment area, while others would have to cram up to 100 students in a classroom.

District officials say they are trying to keep up with charter demands, but that an insufficient supply of campuses has made it difficult.

"The intent is to answer every single proposal," said Parker Hudnut, executive director of LAUSD's Charter and Innovation Division.

"But there are very challenging issues being debated on how best to meet the needs of all public school children."

Hudnut said the district has extended offers of space to a greater number of charter schools since settling the access lawsuit in 2008. However, the district could not provide specific figures.

The tug-of-war over between the district and charter schools over campus access goes back more than a decade. It issue has grown increasingly contentious as the alternative campuses have surged in popularity.

An estimated 67,000 students are enrolled in charter schools in Los Angeles Unified - more than the total student enrollment in urban school districts such as Boston, San Francisco or Washington, D.C.

Feeling pressure from the public and charters, the Los Angeles school board has struggled to find compromises. But even board members who support the charter movement say there is a limit as to what can be done.

"I want to offer educational choices to district families, but we don't have the money or the space to offer classrooms to 81 charters," said board member Tamar Galatzan, who represents parts of the San Fernando Valley.

"I don't know where the happy medium is ... Should the board only approve the charter schools that we have space to house?"

Meanwhile, charter campus officials feel they are continuing to get unfair treatment from LAUSD.

"As a parent, a charter school administrator and a community member I see kids attending charter schools being treated differently ... as second-class citizens ... because they choose to attend charter schools," said Tatyana Berkovich, founder and president of Ivy Academia, a charter school with four facilities in the West San Fernando Valley.

"Students at charter schools are already only

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given leftover space ... That is not only a potential violation of federal discrimination laws but it violates the whole purpose of Proposition 39 that states we need to have equal rights to facilities."

But Hudnut said that finding classroom space for charters is not an easy task.

Rather than opening up space for charters, declining enrollment has simply allowed Los Angeles Unified to transition from year-round to traditional calendars in formerly overcrowded areas.

But after so many years of battling for space, many charter school administrators think it's time that LAUSD tried harder to meet their needs.

Mike Piscal, chief executive officer of ICEF Public Schools, a charter management organization that runs 15 schools in South Los Angeles, said he made eight requests to the district for space. As of Friday, he had received only one response - the renewal of an earlier agreement to share space with the district.

"We are paying rent for facilities that have no gym, no library, no field," Piscal said. "We don't even have one square (foot) of grass."

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# EXHIBIT H



***Los Angeles Unified School District***

**OFFICE OF THE GENERAL COUNSEL**

333 S. Beaudry Avenue, 24<sup>th</sup> Floor, Los Angeles, CA 90017

TELEPHONE: (213) 241-7600; FACSIMILE (213) 241-8444

**RAMON C. CORTINES**  
*Superintendent of Schools*

**DAVID HOLMQUIST**  
*General Counsel*

April 9, 2010

Maria C.R. Heredia  
SVP Legal Advocacy and General Counsel  
California Charter Schools Association  
2468 Historic Decatur Road, Suite 130  
San Diego, California 92108

Re: **Request that LAUSD Comply with Proposition 39 and Settlement Agreement**

Dear Ms. Heredia:

I am in receipt of your letter dated March 19, 2010, wherein you have cited allegations of the District's violation of Proposition 39 and breach of the 2008 settlement agreement between the District and California Charter Schools Association, et al.

Although we disagree with many of your statements, including the characterization of events and the law, it is neither appropriate nor productive to simply respond item by item to your letter. We would, however, certainly welcome the opportunity to meet to discuss these matters with you directly.

The Superintendent, the Board Members and District staff have all been working closely with both CCSA and its member charter schools to achieve both short-term and long-term facilities solutions. We look forward to sharing with you the District's substantial and good faith efforts and accomplishments toward this end and to discuss a continued amiable course of action that will achieve our mutual objective to provide public school students with a safe and appropriate learning environment.

Please contact me directly to arrange a mutually convenient time and location to meet.

Sincerely,

DAVID HOLMQUIST  
General Counsel

cc: Ramon Cortines  
Janice Sawyer  
Parker Hudnut  
James Sohn

Los Angeles Unified School District  
Office of the General Counsel  
333 S. Beaudry Avenue, 24th Floor  
Los Angeles, CA 90017

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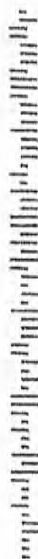


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Maria C.R. Heredia  
SVP Legal Advocacy and General Counsel  
California Charter Schools Association  
2468 Historic Decatur Road, Suite 130  
San Diego, California 92108

BCZ-GM1

52106



# EXHIBIT I



tel: (619) 619-7549 2468 Historic Decatur Rd., Ste. 130, San Diego, CA 92106

[www.myschool.org](http://www.myschool.org)

April 30, 2010

***VIA E-MAIL AND REGULAR U.S. MAIL***

David Holmquist  
General Counsel  
Los Angeles Unified School District  
Administrative Office  
333 South Beaudry Avenue, 24th Floor  
Los Angeles, CA 90017

Re: Request that LAUSD Comply with Proposition 39 and Settlement Agreement

Dear Mr. Holmquist:

This letter is written in response to yours dated April 9, 2010.

A considerable amount of effort went into the March 19, 2010 letter submitted by the California Charter Schools Association ("CCSA"). Indeed, in order to provide the Los Angeles School District ("LAUSD" or "District") with a clear and thorough understanding of CCSA's interests, the letter identified and described in detail some of the District's more critical failures to comply with Proposition 39 ("Prop. 39") and the terms of the April 22, 2008 settlement agreement between the District and CCSA ("Settlement Agreement").

It is disappointing that District did not provide any substantive response to the issues raised in the Association's letter. Moreover, it is even more disappointing that none of CCSA's requests have been met to date. By way of example, the District failed to make compliant offers to this year's 81 Prop. 39 applicants. Making 44 partial, deficient and non-compliant offers simply does not meet the District's legal obligations.

Despite the fact that we seem to have a difference of opinion as to the District's efforts and outcomes, we nevertheless welcome the opportunity to discuss the issues raised in CCSA's demand letter with you and your team. However, in the interest of making this a productive use of our respective time, we would like to confirm that:

(1) Your selected team will be prepared to address each of the points CCSA raised with concrete detail during our discussions;

(2) The District will be represented by empowered decision makers that are able to commit the District to concrete action plans for compliance with Prop. 39 and the terms of the Settlement Agreement. From our perspective, it seems that Parker Hudnut and James Sohn should be present for those discussions; and,

(3) The District can meet within the next two weeks.

Without these assurances, it is difficult to imagine how another meeting between these two entities might resolve the disputes. From the perspective of CCSA and its membership, it has been several years of talking about and seeking compliance without much progress. Accordingly, the charter school community needs meaningful delivery under Prop. 39 and the Settlement Agreement.

If you can meet these assurances, please let us know which individuals will participate in these discussions on behalf of the District. In addition, please provide us with your team's dates and times of availability over the next two weeks as we strongly believe that these matters need immediate attention.

Sincerely,



Maria C.R. Heredia  
SVP Legal Advocacy and General Counsel  
California Charter Schools Association

cc: Ramon Cortines, Superintendent (By E-mail Only)  
Parker Hudnut, Executive Director of the Innovation and Charter Division (By E-mail Only)  
James Sohn, Chief Facilities Executive (By E-mail Only)  
Jed Wallace, CCSA Chief Executive Officer (By E-mail Only)  
Allison Bajracharya, CCSA Managing Regional Director of Policy and Advocacy (By E-mail Only)  
Paul Escala, CCSA Senior Advisor, Charter School Facilities (By E-mail Only)

# EXHIBIT J



***Los Angeles Unified School District***

**OFFICE OF THE GENERAL COUNSEL**

333 S. Beaudry Avenue, 24<sup>th</sup> Floor, Los Angeles, CA 90017  
TELEPHONE: (213) 241-7600; FACSIMILE (213) 241-8444

**RAMON C. CORTINES**  
*Superintendent of Schools*

**DAVID HOLMQUIST**  
*General Counsel*

May 5, 2010

Maria C.R. Heredia  
SVP Legal Advocacy and General Counsel  
California Charter Schools Association  
2468 Historic Decatur Road, Suite 130  
San Diego, California 92108

**Re: Request that LAUSD Comply with Proposition 39 and Settlement Agreement**

Dear Ms. Heredia:

Thank you for your letter of April 30, 2010. I have asked Michelle Meghrouni, the Team Leader for the Facilities Legal Team, to contact you directly to coordinate the meeting between the District and CCSA to discuss the issues raised in your March 19, 2010 letter.

We certainly agree that having the right individuals at the meeting is critical to a meaningful and productive dialogue. To that end, we are meeting internally with various individuals from each of the Divisions within the District that have responsibility for the matters relevant to that discussion. As you can understand, that process is complicated by budget constraints, furlough schedules, and personnel and organizational changes within and among these Divisions. We will, nevertheless, endeavor to meet with CCSA as soon as possible in an effort to resolve these matters without resort to costly and protracted litigation.

In the meantime, please feel free to contact me directly if you have any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Holmquist", with a stylized flourish extending from the end.

David Holmquist  
General Counsel

cc: Ramon Cortines  
Janice Sawyer  
Parker Hudnut  
James Sohn

Los Angeles Unified School District  
Office of the General Counsel  
333 S. Beaudry Avenue, 24th Floor  
Los Angeles, CA 90017

RETURN SERVICE  
REQUESTED

PRESORTED  
FIRST CLASS



Maria C.R. Heredia  
SVP Legal Advocacy and General Counsel  
California Charter Schools Association  
2468 Historic Decatur Road, Suite 130  
San Diego, California 92108

DCZ-QM1

92108

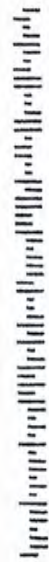


EXHIBIT K

**LOS ANGELES UNIFIED SCHOOL DISTRICT**  
*Office of the Senior Deputy Superintendent*

**Inter-Office Correspondence**

**To:** Members, Board of Education  
David L. Brewer III, Superintendent

**Date:** April 22, 2008

**From:**  Ray Cortines

**Subject:** TAFT HIGH SCHOOL PROP 39 CO-LOCATION

Beginning today, I will be actively involved in the decision-making process concerning Proposition 39 offers. I understand that there are many important factors to consider when making decisions about placing charter schools on an LAUSD school site. The District has a legal obligation under Proposition 39 to provide facilities to charter schools that apply for space and this legal obligation is buttressed by a settlement agreement in which LAUSD agreed to, among other things, satisfy its legal obligation. On the other hand, this year LAUSD received a record number of applications for space; 55 charter schools applied for over 17, 000 seats. My understanding is this is almost three times the approximately 6,000 seats charter schools applied for last year. Given this level of demand, there is understandable concern on the part of administrators, teachers, parents, and students at LAUSD school sites about the instructional impact of LAUSD's efforts to satisfy its legal obligations.

In an effort to address this concern, I have assigned two experienced LAUSD instructional leaders to the teams visiting the LAUSD schools in anticipation of charter school co-locations. The administrators will analyze the instructional impact of proposed charter school co-locations. Their analysis will be an important part of the decision-making process related to co-locations.

In addition, I am open to discussing alternatives to the co-location recommendations made by the Facilities Services Division that you or the relevant LAUSD school community believe would better serve students. We must all, keep in mind, however, that LAUSD has an obligation to make space available under the law and the settlement agreement. Foregoing the co-location, therefore, is not a viable alternative unless I find that the co-location is clearly detrimental to the education of charter or non-charter school students.

In this process we must all be guided by the recognition that all of the students both charter and non-charter, are students of LAUSD and our vision is that all students will be college prepared and career ready.

Below please find for your consideration a listing of the issues and recommendations for Taft High School.

School	Total # Classrooms	# Classrooms Needed for Charter	Issues	Facilities Recommendations
Taft HS	121	15	<ol style="list-style-type: none"> <li>1. Parents and UTLA are opposing a charter co-location</li> <li>2. Currently there are 7 classrooms available on the campus for charter use.</li> <li>3. Taft will receive approximately 500 students into the 9<sup>th</sup> grade through open enrollment and PWT.</li> <li>4. The only way to produce 15 classrooms is to cap the number of 9<sup>th</sup> grade open enrollment and PWT</li> <li>5. Taft has several classrooms that are used for part of the day.</li> </ol>	<ol style="list-style-type: none"> <li>1. Remove 15 classrooms from Taft's inventory</li> <li>2. Re-do the master schedule for Taft with 106 classrooms and eliminate partial use of classrooms</li> <li>3. Have Superintendent Brown and Principal Thomas represent at the community meeting tonight that the District and the school will work with the charter to make this successful.</li> </ol>

c: Jean Brown  
Sharon Thomas  
Angela Hewlett Bloch  
Jeffrey Davis  
Caprice Young  
John Creer  
Ana Fernandez

**LOS ANGELES UNIFIED SCHOOL DISTRICT**  
*Office of the Senior Deputy Superintendent*

**Inter-Office Correspondence**

**To:** Members, Board of Education  
David L. Brewer III, Superintendent

**Date:** April 22, 2008

**From:**  Ray Cortines

**Subject:** FAIRFAX HIGH SCHOOL PROP 39 CO-LOCATION

Beginning today, I will be actively involved in the decision-making process concerning Proposition 39 offers. I understand that there are many important factors to consider when making decisions about placing charter schools on an LAUSD school site. The District has a legal obligation under Proposition 39 to provide facilities to charter schools that apply for space and this legal obligation is buttressed by a settlement agreement in which LAUSD agreed to, among other things, satisfy its legal obligation. On the other hand, this year LAUSD received a record number of applications for space; 55 charter schools applied for over 17, 000 seats. My understanding is this is almost three times the approximately 6,000 seats charter schools applied for last year. Given this level of demand, there is understandable concern on the part of administrators, teachers, parents, and students at LAUSD school sites about the instructional impact of LAUSD's efforts to satisfy its legal obligations.

In an effort to address this concern, I have assigned two experienced LAUSD instructional leaders to the teams visiting the LAUSD schools in anticipation of charter school co-locations. The administrators will analyze the instructional impact of proposed charter school co-locations. Their analysis will be an important part of the decision-making process related to co-locations.

In addition, I am open to discussing alternatives to the co-location recommendations made by the Facilities Services Division that you or the relevant LAUSD school community believe would better serve students. We must all, keep in mind, however, that LAUSD has an obligation to make space available under the law and the settlement agreement. Foregoing the co-location, therefore, is not a viable alternative unless I find that the co-location is clearly detrimental to the education of charter or non-charter school students.

In this process we must all be guided by the recognition that all of the students both charter and non-charter, are students of LAUSD and our vision is that all students will be college prepared and career ready.

Below please find for your consideration a listing of the issues and recommendations for Fairfax High School.

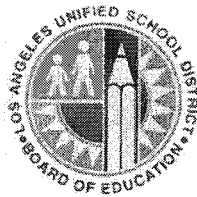
School	Total # Classrooms	# Classrooms Needed for Charter	Issues	Facilities Recommendations
Fairfax HS	125	13	<ol style="list-style-type: none"> <li>1. Community and UTLA are opposing charter co-location</li> <li>2. SLC offices are required for SLC conversion plan</li> <li>3. Many rooms are partially used throughout the day</li> </ol>	<ol style="list-style-type: none"> <li>1. Put on hold for a few days until District and Fairfax can work out a compromise for space utilization</li> <li>2. Re-master schedule to campus to eliminate partial use of classrooms</li> </ol>

c: Richard Alonzo  
Edward Zuriate  
Angela Hewlett Bloch  
Jeffrey Davis  
Caprice Young  
John Creer  
Ana Fernandez

EXHIBIT L

**MEMBERS OF THE BOARD**

**MONICA GARCIA, PRESIDENT**  
**MARLENE CANTER**  
**YOLIE FLORES AGUILAR**  
**TAMAR GALATZAN**  
**JULIE KORENSTEIN**  
**MARGUERITE POINDEXTER LAMOTTE**  
**RICHARD A. VLADOVIC**



**LOS ANGELES UNIFIED SCHOOL DISTRICT**

Administrative Office  
333 South Beaudry Avenue, 11<sup>th</sup> Floor  
Los Angeles, California 90017  
Telephone: (213) 241-0800  
Fax: (213) 241-4546

**DAVID L. BREWER III**  
**SUPERINTENDENT OF SCHOOLS**

**RAMON C. CORTINES**  
**SENIOR DEPUTY SUPERINTENDENT**

Date: April 30, 2008

To: Members, Board of Education  
David L. Brewer III, Superintendent of Schools

From: Ray Cortines  
Senior Deputy Superintendent

Re: Prop 39 Update

---

Per my memo on April 22, I have convened an instructional group to work with Facilities to reevaluate the 2008-09 Prop 39 offers. Today we met and reviewed each District campus offered for a Prop 39 co-location and the potential instructional impacts.

As a result of our meeting, I have decided to withdraw the following seven offers based on the instructional impacts the charter co-location would impose:

Taft High School  
Fairfax High School  
Crenshaw High School  
Wadsworth Elementary School  
49<sup>th</sup> Street Elementary School  
Miles Elementary School  
Hughes Elementary School

I am sending a letter to each of the charters that received Prop 39 space on the above mentioned District campuses notifying them of my decision.

I have also directed the group to visit five schools to reevaluate the instructional impacts. On Friday, May 2, I will meet with the group to finalize my decisions on all of the remaining offers. I will inform you of my final decisions early next week.

I also intend to communicate in a letter to the California Charter Schools Association of my final decisions on all of the 2008-09 Prop 39 offers. I will offer my assistance to work with them to possibly find alternative space solutions. The 2008-09 Prop 39 implementation process makes great strides in addressing their facility needs under Prop 39. We will continue to work with them with an increased focus on the instructional integrity of programs for all students.

*"Every LAUSD student will receive a state-of-the-art education in a safe, caring environment, and every graduate will be college-prepared and career ready."*

My personal experience running a 3,000+ student secondary campus, even on 40 acres, has greatly informed my decision-making process. I am committed to supporting the instructional needs of all students but will caution against negatively impacting the efforts of any school program, District or charter.

c: Caprice Young

AJ Duffy

Michael Sullivan

Guy Mehula

Local District Superintendents

John Creer

Ana Teresa Fernandez

Angela Hewlett-Bloch

Janice Davis

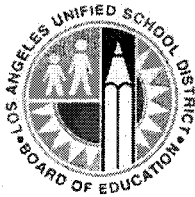
Jeffrey Davis

Jose Cole-Gutierrez

Gregory McNair

**MEMBERS OF THE BOARD**

MONICA GARCIA, PRESIDENT  
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TAMAR GALATZAN  
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MARGUERITE POINDEXTER LAMOTTE  
RICHARD A. VLADOVIC



**LOS ANGELES UNIFIED SCHOOL DISTRICT**

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**DAVID L. BREWER III**  
**SUPERINTENDENT OF SCHOOLS**

**RAMON C. CORTINES**  
**SENIOR DEPUTY SUPERINTENDENT**

April 30, 2008


Via Facsimile at (310) 231-3399 and First Class Mail

Ms. Sharon Weir, Principal  
New West Charter  
11625 Pico Blvd  
Los Angeles, CA 90065

Dear Ms. Weir,

As you know, on April 1, 2008, the Charter Schools Division of LAUSD extended an offer to New West Charter school to co-locate on the campus of Fairfax High School under Proposition 39. Over the past few weeks I have reassessed this offer and have concluded that the campus of Fairfax High School cannot be shared fairly among the non-charter and charter school students because the co-location may have a detrimental impact on the education of all the students on this campus. I am therefore withdrawing the offer made to New West Charter of thirteen classrooms at Fairfax High School.

Thank you,

  
Ray Cortines  
Sr. Deputy Superintendent

*"Every LAUSD student will receive a state-of-the-art education in a safe, caring environment, and every graduate will be college-prepared and career ready."*

# EXHIBIT M



VIA E-MAIL AND  
U.S. MAIL

January 29, 2009

Jose Cole-Gutierrez  
Director, Charter Schools Division  
Los Angeles Unified School District  
333 S. Beaudry Ave  
Los Angeles, CA 90017

Re: 2009-10 Proposition 39 Facilities Requests

Dear Mr. Cole-Gutierrez:

We are writing to share concerns we have with the District's implementation of Proposition 39 for the 2009-10 school year. We understand that by ignoring valid evidence supporting ADA projections, the District has determined that eleven charter schools are ineligible for facilities, and that many more are not eligible for the full ADA they projected. We further understand that the District has contemplated ignoring its obligation to make all schools preliminary offers by February 1. We demand that the district immediately re-evaluate its implementation process to ensure compliance with the revised Prop. 39 Implementing Regulations. A brief summary of the concerns follows.

As an important reminder, the State Board of Education revised the Prop. 39 Implementing Regulations for the 2009-10 school year. Among the revisions were significant changes to a charter school's obligation to submit supporting documentation for its ADA projections. In particular, under section 11969.9(c)(1)(C) of the Implementing Regulations, a charter school's written facilities request must consist of:

*if relevant (i.e., when a charter school is not yet open or to the extent an operating charter school projects a substantial increase in in-district ADA), documentation of the number of in-district students meaningfully interested in attending the charter school that is sufficient for the district to determine the reasonableness*

*of the projection, but that need not be verifiable for precise arithmetical accuracy.*

Additionally, the Implementing Regulations as revised established a new, iterative process between charter schools and districts, requiring districts to express any objections to a charter school's ADA projections and allowing charter schools the opportunity to respond to those concerns. (Implementing Regulations, Section 11969.9(d)-(f).) In this process, schools first submit their request to the District with ADA projections on November 1. By December 1, districts must submit any objections to the charter schools. By January 2, charter schools must respond to the district's objections. And by February 1, the District must make its preliminary offer of facilities.

Based upon information gathered from our requests under the Public Records Act and conversations with our member charter schools, we understand that the District is not honoring these sections of the Implementing Regulations.

First, the District has in many cases ignored schools' documentation of historical enrollment, retention, and growth trends, prior ADA figures, and/or historical and current wait list information, along with other valid evidence. Instead, the district in many cases only acknowledged one-to-one verification of specific names of meaningfully interested students to justify ADA projections. This practice violates the Implementing Regulations' express provision that the projections "need not be verifiable for precise arithmetical accuracy."

Second, we understand that the District rejected outright many schools' ADA projections, deeming approximately 11 schools "ineligible" for facilities. The District sent those schools letters on December 1 informing them of this determination without informing the schools of their right to respond to the District's determination by January 2. In doing so, the District cut off the iterative process for those schools, completely ignoring this section of the revised Implementing Regulations.

Third, we understand that the District unilaterally reduced many schools' ADA projections in its December 1 correspondence. These schools understood from the District that it would not consider any additional evidence, documentation or explanation that the school might produce in its January 2 response in order to address the District's ADA reduction. Again, the District cut off the iterative process for these schools, ignoring a requirement of the Implementing Regulations.

Fourth, it appears that the District has imposed a new requirement to existing charter schools' ADA projections—that the ADA projection must correspond, one-to-one with a "meaningfully interested" student. We recognize that to be eligible for facilities under Prop. 39, an existing charter school must demonstrate at least 80 in-district students who are "meaningfully interested" in attending the school. However, once an existing charter school meets this minimum threshold, the "meaningfully interested" documentation standard does not apply. An existing school must provide only a reasonable projection of anticipated ADA along with a description of the methodology used to make that projection.

Finally, the District has asked some schools to forgo their rights to receive a preliminary offer. District staff asked charter schools to agree that the District will

not be providing a preliminary offer by February 1 in order to provide additional time to negotiate on a particular site. We suggest that one of the main reasons for a preliminary offer is to encourage negotiation. The State Board of Education added the February 1 deadline to ensure that districts make preliminary offers with sufficient time for negotiation even if specific details of the proposed site must be worked out in the negotiation process. We urge the district to make preliminary offers by the February 1 deadline in compliance with the revised Implementing Regulations.

These practices are frustrating given the District and the Association's commitment to work together toward satisfying all Association member schools' requests for facilities. The District and the Association memorialized this commitment in the April 22, 2008 settlement agreement, which provides: "[once] a CCSA member charter school submits a future facilities request that is legally sufficient under Proposition 39 and any Proposition 39 Implementing Regulations in effect at that time, LAUSD shall make a facilities offer to that charter school that complies with Proposition 39 and any Proposition 39 Implementing Regulations in effect at that time." Settlement Agreement, §4.

We urge the District work toward rectifying these issues. As always, we are available to assist in that effort.

Sincerely,

Gary Borden  
California Charter Schools Association

C: Mr. John Creer,  
Ms. Ana Teresa Fernandez

EXHIBIT N

## So-called school reform

**T**HE LOS ANGELES Unified school board looked transformation in the eye — and blinked. By overriding several recommendations of its top experts and cutting three of the region's most respected charter organizations out of the picture, the board sadly demonstrated once again that it is devoted more to the politics of running schools than to the education of students.

Charter school organizations submitted relatively few applications to run 30 new or underperforming schools — part of a multi-year initiative to give outside operators a chance to manage perhaps 250 — and in many cases they were passed over in favor of teacher groups by Supt. Ramon C. Cortines and his panel in charge of vetting the applications. Cortines gave a thoughtful, precise analysis of his choices, and we're not going to second-guess his decisions.

But then, in a shameful turn, the school board overruled him on several choices, pushing several charter groups out of the running and in one case introducing an amendment to the Public School Choice initiative with no discussion.

There is no way to ignore the effect of heavy lobbying by labor-related groups against the charter applicants. One board member reportedly voted against a certain charter because of personal dislike of its leader. Another said privately that the

board is already liberal in its approval of new charter schools; why give them district campuses as well? If those are among the prevailing opinions, it's hard to see why the board bothered with the initiative in the first place.

What was supposed to be one of the most important factors in the decisions — whether the applicants could demonstrate a record of educational success — ended up not being a factor at all. The board gave Mayor Antonio Villaraigosa a third school he sought against the recommendation of staff, who had proposed giving just two to his Partnership for Los Angeles Schools. The partnership has made a sincere, concerted effort to improve the schools it already runs, but its record is mixed. Meanwhile, charter groups such as Green Dot Public Schools, Inner City Education Foundation and the Alliance for College-Ready Public Schools, known as committed school operators with excellent records, were given none. In all, charter groups ended up with only four of the 30 schools.

We stand by our original support for the idea of creating a competitive mix of innovative educational models in the school district — and we applaud the teacher groups that devised their own, strong plans for reform. But we're also forced to stand by our original suspicion that the board would find many ways to make a mess of it.

EXHIBIT O

**Los Angeles Unified School District**  
**OFFICE OF COMMUNICATIONS**  
333 S. Beaudry Ave., 24th floor  
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# News Release

**For Immediate Release**

March 17, 2010  
#09/10-190

## **LAUSD REVISES INTER-DISTRICT TRANSFER POLICY**

*DECISION COULD BRING APPROXIMATELY \$51 MILLION IN NEW REVENUE*

LOS ANGELES— In order to respond to the devastating budget crisis faced by the Los Angeles Unified School District (LAUSD), the District has revised its policy on the issuance of Inter-District Permits. The Permit program has traditionally allowed parents and guardians the ability to have their children attend schools outside of the District's boundaries. Under the current policy, LAUSD loses approximately \$51 million each year that could go to help maintain class size and save teacher jobs.

"Just about every school district in the Los Angeles area is experiencing massive budget deficits but ours is the largest at \$640 million," said Superintendent Ramon C. Cortines. "It is time to bring our students home to LAUSD where we still have plenty of excellent schools for them to attend and we have great teachers to instruct them.

"LAUSD has made great strides in improving the educational options for students who reside within the boundaries of our school district," he continued. "We have a number of educational options for students who reside within the boundaries of our school district including: award-winning magnet programs and a number of California Distinguished Schools, small schools and small learning communities, as well as high-performing campuses with personalized learning experiences.

"Additionally, we have invested \$14 billion in constructing 87 brand new schools and have completed nearly 20,000 modernization projects designed to promote positive educational learning environments and excellence in academic achievement," Cortines added. "In light of these improvements, I have asked staff to implement a permit policy that limits the types of permits issued to students and families requesting attendance in other school districts. However, every request for a transfer will be individually reviewed and evaluated in its own merit."

The LAUSD will limit out-going, inter-district permits to **Parent Employment** and **Senior Status**. **Parent Employment Permits** are allowed for students whose parent/guardian is physically employed within the boundaries of another school district. **Senior Status Permits** will be issued to allow students to complete the final year at their school of

(more)

attendance at their current elementary, middle or high school (e.g., 5<sup>th</sup>, 8<sup>th</sup> and 12<sup>th</sup> grade). Parents/guardians may still submit applications for permits to attend unique educational programs or exceptions for permits that fall outside of the two conditions described above. Those applications will be reviewed individually and evaluated on their own merit.

If a permit request is denied, parents/guardians will be informed of appeal procedures by the District. Parents/guardians have the right to appeal permit application decisions through the LAUSD Office of Permits and Student Transfers, and the Los Angeles County Office of Education ([www.lacoe.edu](http://www.lacoe.edu)).

A letter will be sent to parents and guardians affected by the new policy change informing them of the many educational opportunities afforded to them. These include attending the school of residence, obtaining permission to attend another school within the District's boundaries, using the Open Enrollment process and applying for magnet schools in the future.

In the past, the LAUSD has offered different types of permits based on child care, continuing enrollment and others. This has allowed many students to leave the District. Last year, the LAUSD released 12,249 students to other school districts.

For further information regarding Inter-District Transfers, contact the Office of Permits and Student Transfers at (213) 745-1960.

###

EXHIBIT P

## ADOPTED AS AMENDED

### BOARD OF EDUCATION REVISED REPORT NO. 257-03-04

Instructional Services  
for presentation to the Board of Education on March 9, 2004

**SUBJECT: POLICIES AND PROCEDURES REGARDING ALLOCATION OF FACILITIES TO  
CHARTER SCHOOLS UNDER EDUCATION CODE SECTION 47614 (PROP 39)**

**A. PROPOSAL**

It is proposed that the Board of Education approve the Policies and Procedures Regarding Allocation of Facilities to Charter Schools under Education Code Section 47614.

**B. BACKGROUND**

On November 7, 2000, California voters approved Proposition 39, amending Education Code section 47614, governing allocation of public school district facilities to charter schools. Section 47614 states that a school district's responsibilities to make facilities available to charter schools take effect on the first day of July in the year following passage of a local bond measure. On November 5, 2002, Los Angeles voters approved Measure K authorizing the sale of bonds to fund LAUSD construction and modernization efforts. Therefore, the District's responsibilities under amended section 47614 became effective for the District on July 1, 2003.

**\*C.**

Amended

**POLICY FOR THE ALLOCATION OF FACILITIES TO CHARTER SCHOOLS**

1. Under Education Code section 47614 the District must annually identify "reasonably equivalent" facilities that are under-utilized, contiguous and can be made available for charter school students. Such facilities must be owned by the District, located in the District and offered to charter schools to accommodate students otherwise legally entitled to attend District schools subject to the following statutory conditions:

a. The charter school must have a charter approved by the District, County Board of Education, or the State Board of Education, on or before March 1 of the fiscal year preceding the fiscal year for which the facilities are sought.

b. The District has no obligation to provide facilities to a charter school that has not identified at least 80 in-district students who are enrolled or meaningfully interested in enrolling in the charter school during the year for which the facilities are being sought.

c. The District is not required to use unrestricted general fund revenues to rent, buy or lease a charter school facility.

d. The District retains the ownership of any facilities allocated to a charter school.

e. The District and charter schools are free to enter into any mutually acceptable arrangement for the provision and use of facilities that is outside the scope of Education Code section 47614 and the policies contained herein.

f. Any facility made available to a charter school under this policy shall be made available on a year-to-year basis only and the charter school using such facilities shall annually notify the parents and guardians of its pupils that the school's use of the District facility is subject to change annually.

2. In addition, we propose that the availability of facilities pursuant to Section 47614 be subject also to the following condition: Facilities will not be made available to a charter school unless the District determines that under-utilized facilities can be made available to a charter school without creating an unfair burden on District-operated programs and students. The following will be considered:

## ADOPTED AS AMENDED

a. No site will be made available to a charter school if, under current five-year enrollment projections, accommodating a charter school on the site would require that non-charter neighborhood pupils be bused to another campus.

b. No site will be made available to a charter school if, under current five-year enrollment projections, accommodating a charter school on the site would require that the District-operated school convert to a Multi-Track Year Round calendar.

c. No site will be made available to a charter school if, under current five-year enrollment projections, accommodating a charter school on the site would require that the District-operated school operate with traveling teachers.

d. No site will be made available to a charter school if the charter grade levels or programs would be fundamentally inconsistent with the District-operated function on the site.

e. No site will be utilized to co-locate a charter and District-operated school unless there can be a physical, operational, and programmatic separation of the schools such that proper accountability of each of the two schools can be maintained during and, to the extent necessary, after the school day so that the charter and District can know that each is responsible for its own operations and are not creating liabilities for the other.

\* f. The provision of facilities does not interfere with the District's short or long term pedagogical, programmatic, logistical, or financial priorities and plans or discretion to make calendar or configuration changes that it deems to be in the best interest of District students, including, but not limited to programming a campus to accommodate full-day kindergarten.

g. The District may, in its sole discretion, determine that it is unreasonably expensive to open, rehabilitate, modernize or otherwise make a facility available for its own students or a charter.

3. Projects eligible to be included in the District's deferred maintenance plan and the replacement of furnishings and equipment supplied by the District will remain the responsibility of the District. However, every charter school that receives facilities from the District pursuant to a request under Education Code §47614 will be charged a pro rata share of the District's facilities costs. Facilities costs include:

a. Costs associated with facilities acquisition, construction, rents and leases. This includes costs associated with capital projects such as acquiring land and buildings, remodeling and constructing buildings, installing or improving service systems, improving sites and the costs of renting or leasing facilities.

b. The contribution from the District's unrestricted general fund revenues to the District's deferred maintenance fund.

c. Costs from unrestricted general fund revenues for projects eligible for funding, but not funded from the deferred maintenance fund.

d. Costs from unrestricted general fund revenues for the replacement of furnishings and equipment according to District schedules and practices.

e. Debt service costs.

4. The ongoing maintenance of facilities, furnishings and equipment is the responsibility of the charter school. Maintenance services (custodial service, landscaping and gardening) may be obtained from the District on a fee-for-service basis.

**\* D. PROCESS FOR THE ALLOCATION OF FACILITIES TO CHARTER SCHOOLS****Amended**

Under Title 5, California Code of Regulations, section 11969.9, charter schools seeking access to District-owned facilities must have a charter that has been granted by the District, County Board of Education or the State Board of Education on or before March 1 of the fiscal year preceding the fiscal year for which facilities are requested. The charter schools must also submit a timely and appropriate written request for facilities. The timeline set forth in state regulations is set forth below:

<u>Dates</u>	<u>Tasks</u>
October 1	Deadline for <b>existing charter schools</b> to submit facilities requests for the following school year.
November 15	Deadline for <b>prospective charter schools</b> to submit <b>charter petitions to</b> the Charter Office to become operative the following fiscal year – in order to qualify for facilities.
January 1	Deadline for <b>newly approved charter schools and prospective charter schools</b> (scheduled to open the following fiscal year) to submit facilities requests.

1. All facilities requests submitted by a charter school shall include the following information:

- a. A reasonable projection of in-district and total ADA and in-district and total classroom ADA (broken down by grade level and by school that the student would otherwise attend)
- b. A description of the methodology for the ADA projections.
- c. Documentation of the number of in-district students attending the charter school or meaningfully interested in attending the charter school during the fiscal year for which facilities are requested (broken down by grade level and by the student's home school and, if different, the school that the student would otherwise attend)
- d. The charter school's instructional calendar.
- e. A description of the general geographic area in which the charter school wishes to locate.
- f. Information about the charter school's educational program that is relevant to the allocation of facilities (e.g. If the charter school is requesting facilities appropriate for a science lab., information about the science program should be included in the proposal).
- g. Audited financial statements that reflect the charter school's ability to maintain and improve the facilities.

2. In the event that more than one charter school requests a particular facility, or a lack of facilities requires that a particular facility be offered to multiple eligible applicants, the District will apply the following criteria in prioritizing applications:

- a. First priority will be granted to an affiliated charter school.
- b. Second priority will be given to charter schools serving under-served areas, as defined by the District.
- c. Third priority will be granted to any existing charter schools that have historically enrolled District CAP and permit students, who are legally permitted in their charters to give enrollment preference to those students and agreed to do so.

- d. Fourth priority will be given to charter schools with the earliest date of charter

## ADOPTED AS AMENDED

approval.

e. The last priority will be given to charter schools within the geographical boundaries of the District, but whose charter is not approved by the District.

Consistent with its statutory obligations, the District will prepare a preliminary proposal regarding the facilities that may be allocated to the charter school and give the charter school a reasonable opportunity to review and comment on it. The District will also provide a notification of the facilities offered to a charter school on or before **April 1** of the fiscal year preceding the fiscal year for which facilities are requested. No offer of a facility to a charter school shall result in an allocation of that facility to that charter school unless that allocation has been ratified by the District's Board of Education.

### E. BUDGET IMPLICATIONS

There are likely to be significant costs associated with adoption of this policy. Capitalizable costs associated with making facilities available to charter schools shall only be paid for out of Measure K and Measure R bond proceeds.

### F. DESEGREGATION IMPACT

This action has been reviewed and does not require a Desegregation Impact Statement. Each allocation of a facility to a charter school may be subject to a Desegregation Impact Statement.

### \* G. RECOMMENDATION

**Amended**

IT IS RECOMMENDED that the Board of Education approve the Policies and Procedures regarding Allocation of Facilities to Charter Schools under Education Code Section 47614 (Prop 39).

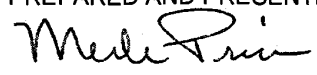
Respectfully submitted,

ROY ROMER  
Superintendent of Schools

APPROVED AS TO BUDGET IMPLICATIONS:

  
LORENZO TYNER  
Budget Director

PREPARED AND PRESENTED BY:

  
MERLE PRICE  
Deputy Superintendent, Instructional Services

  
JEAN BROWN  
Assistant Superintendent, Instructional Support Services

**\*AMENDMENT TO BOARD OF EDUCATION REVISED REPORT NO. 257 - 03/04**

Item C-2-f of the Board Report adding the words "adult education, early childhood, and primary centers" at the end of the sentence.

Item II-A-6 of the Policies and Procedures document adding the words "including, but not limited to programming a campus to accommodate full day kindergarten, adult education, early childhood education, and primary centers" at the end of the sentence.

Item C of the Board Report changing the title to read: Summary of the Policy for the Allocation of Facilities to Charter Schools,

Item D of the Board Report changing the title to read: Summary of the Process for the Allocation of Facilities to Charter Schools, and

Item G of the Board Report changing the Recommendation to read: It is recommended that the Board of Education approve the attached document Policies and Procedures regarding Allocation of Facilities to Charter Schools under Education Code Section 47614 (Prop 39).

**ADOPTED AS AMENDED**

**LOS ANGELES UNIFIED SCHOOL DISTRICT  
POLICIES AND PROCEDURES REGARDING ALLOCATION  
OF FACILITIES TO CHARTER SCHOOLS UNDER  
EDUCATION CODE SECTION 47614**

## **I. INTRODUCTION AND OVERVIEW**

Education Code section 47614 was amended by the passage of Proposition 39. Regulations drafted by the California Department of Education and disseminated by the State Board of Education explain the responsibilities of the District and charter schools under the statute. (See, California Code Regulations, Title 5, sections 11969.1-11969.9) This document sets forth the District's policies and procedures regarding the allocation of facilities to charter schools with the above statutory and regulatory frameworks in mind.

## **\* II. DISTRICT RESPONSIBILITY**

The District:

**Amended**

- \* A. Must make available a facility to any charter school that makes a timely and appropriate request, subject to the following *conditions*:
  - 1. The school must have a charter approved by either the District, County Board of Education, or the State Board of Education, on or before March 1 of the fiscal year proceeding the fiscal year for which the facilities are sought.
  - 2. The District has no obligation to provide facilities to a charter school that has not identified at least 80 in-district students who are enrolled or meaningfully interested in enrolling in the charter school during the year for which the facilities are being sought.
  - 3. The District is not required to use unrestricted general funds to rent, buy or lease a charter school facility.
  - 4. The District owns any facilities allocated to a charter school.
  - 5. The District and charter schools are free to enter into any mutually acceptable arrangement for the provision and use of facilities that is outside the scope of Education Code section 47614 and the policies contained herein.
  - \* 6. The provision of facilities does not interfere with the District's short or long term pedagogical, programmatic, logistical, or financial priorities and plans or discretion to make calendar or configuration changes that it deems to be in the best interest of District students.
  - 7. The District may, in its sole discretion, determine that it is unreasonably expensive to open, rehabilitate, modernize or otherwise make a facility available for its own students or a charter.
  - 8. Any facilities that are made available to a charter school under this Policy shall be made available on an annual basis only and the District maintains the right, consistent with this Policy and state law, to move a charter school from a District-owned facility.

- B. Must annually identify facilities that are under-utilized, contiguous and can be made available for charter school students.
- C. Must determine whether under-utilized facilities can be made available to a charter school without creating an unfair burden on District-operated programs and students. The following criteria will be utilized:
  - 1. No site will be made available to a charter school if, under current five-year enrollment projections, accommodating a charter school on the site would require that non-charter neighborhood pupils be bused to another campus.
  - 2. No site will be made available to a charter school if, under current five-year enrollment projections, accommodating a charter school on the site would require that the District-operated school convert to a Multi-Track Year Round calendar.
  - 3. No site will be made available to a charter school if, under current five-year enrollment projections, accommodating a charter school on the site would require that teachers at the District-operated school travel.
  - 4. No site will be made available to a charter school if the charter grade levels or programs would be fundamentally inconsistent with the District-operated function on the site.
  - 5. No site will be utilized to co-locate a charter and District-operated school unless there can be a physical, operational, and programmatic separation of the schools such that proper accountability of each of the two schools can be maintained during and, to the extent necessary, after the school day so that the charter and District can know that each is responsible for its own operations and is not creating liabilities for the other.
- D. Will prepare a preliminary proposal regarding the facilities that may be allocated to the charter school for review and comment.
- E. Will, on or before **April 1** of the fiscal year preceding the fiscal year for which facilities are requested, provide a notification of the facilities to be offered to a charter school. The notification shall identify any conditions or contingencies that apply to the notification and the following:
  - 1. The teaching stations and non-teaching stations offered for the exclusive use of the charter school and the teaching stations and non-teaching stations to be shared with District-operated programs, if any.
  - 2. If space is to be shared, the arrangements for sharing.
  - 3. The in-District classroom ADA assumptions for the charter school upon which the allocation is based and, if the assumptions are different than those submitted by the charter school, a written explanation of the reasons for the differences.

4. The pro rata share of District facilities costs that will be charged to the charter school.
  5. The payment schedule for the pro rata share amount, which shall take into account the timing of charter school revenues from the state and from local property taxes.
- F. Will notify the charter school in writing if insufficient space exists with which to make an offer of facilities.
- G. Will furnish, equip and make facilities available for occupancy at least seven days prior to the first day of a charter school's regular school year, but no earlier than September 1 of the school year for which facilities are provided.
- H. All offers of facilities shall be subject to ratification by the District's Board of Education.

### **III. CHARTER SCHOOL RESPONSIBILITY**

- A. Charter schools seeking access to District-owned facilities under Education Code section 47614:
1. Must have a charter that has been granted by the District, County Board of Education, or the State Board of Education on or before March 1 of the fiscal year preceding the fiscal year for which facilities are requested.
  2. Must agree to comply with all statutes, rules, and District policies, concerning the allocation, use, maintenance, improvement, sale and encumbrance of facilities and equipment including, without limitation, Education Code section 47614, California Code of Regulations, Title 5, sections 11969.1-11969.9, and this policy, as they may be amended and/or superseded from time to time.
  3. Must strictly adhere to all timeline dates. (Refer to the TIMELINE section.)
  4. Must notify the District, in writing, whether it intends to occupy the offered facilities by May 1 of the fiscal year preceding the fiscal year for which the facilities are requested or 30 days after the District's notification of availability of the facilities, whichever is later. If a charter does not provide timely written notification of its intent to occupy the offered facilities, it waives the right to occupy the facilities.
  5. Must enter into a written lease, license, use or space sharing agreement with the District on or before June 30 of the fiscal year preceding the fiscal year for which facilities are requested.
  6. Must maintain liability insurance at levels deemed reasonable by the District naming the District as an additional insured and must agree to indemnify the District for damages and losses arising out of or relating to

the charter school's operation and/or the acts or omissions of its officers, employees, agents, contractors, or invitees.

6. Must report actual ADA to the District each time the charter school reports ADA for apportionment purposes. The reports must include in-District and total ADA and in-District and total classroom ADA. Charter schools must maintain records documenting the data contained in the reports. These records shall be made available to the District within ten days after a request by the District for at least five years after the date of the report.
7. Must notify the parents and guardians of pupils enrolled in the charter school, at least once annually, that the facilities made available to it by the District under this Policy are available on a year-to-year basis only and that, under this Policy, the charter school's ability to use a particular District-owned facility will be subject to annual application and review.

#### IV. TIMELINE

DATES	TASKS
October 1	Deadline for <b>existing charter schools</b> to submit facilities requests for the following school year.
November 15	Deadline for <b>prospective charter schools</b> to submit <b>charter petitions to the Charter Office</b> to become operative the following fiscal year – in order to qualify for facilities.
January 1	Deadline for <b>newly approved charter schools and prospective charter schools</b> (scheduled to open the following fiscal year) to submit facilities requests.
March 1	Deadline for approval of <b>prospective charter school's petition</b> , in order for charter to be eligible to receive facilities.
April 1	Deadline for District to make facilities offer to charter schools.
May 1 or 30 days after District's offer	Deadline for charter schools to notify the District, in writing, of their intent to occupy the offered facilities.
June 30	District and charter schools must enter into an agreement regarding the use of and cost of allocated facilities.
7 Days Prior to First Day of Instruction	Deadline for District to furnish, equip and make allocated space available for occupancy.

#### V. FACILITIES REQUEST

- A. All facilities requests submitted by a charter school shall include the following information:
  1. A reasonable projection of in-district and total ADA and in-district and total classroom ADA (broken down by grade level and by school that the student would otherwise attend).
  2. A description of the methodology for the ADA projections.
  3. Documentation of the number of in-district students attending the charter school or meaningfully interested in attending the charter school during

the fiscal year for which facilities are requested (broken down by grade level and by the student's home school and, if different, the school that the student would otherwise attend).

4. The charter school's instructional calendar.
5. A description of the general geographic area in which the charter school wishes to locate.
6. Information about the charter school's educational program that is relevant to the allocation of facilities (e.g. If the charter school is requesting facilities appropriate for a science lab, information about the science program should be included in the proposal).
7. Audited financial statements that reflect the charter school's ability to maintain and improve the facilities.

## **VI. PRIORITIES**

- A. In the event that more than one charter school requests a particular facility, or a lack of facilities requires that a particular facility be offered to multiple eligible applicants, the District will apply the following criteria in prioritizing applications:
  1. First priority will be granted to any affiliated charter schools.
  2. Second priority will be given to charter schools serving under-served areas, as defined by the District.
  3. Third priority will be granted to any existing charter schools that have historically enrolled District CAP and permit students, who are legally permitted to give enrollment preference to those students in their charters and agreed to do so.
  4. Fourth priority will be given to charter schools with the earliest date of charter approval.
  5. The last priority will be given to charter schools within the geographical boundaries of the District, but whose charters are not approved by the District.

- B. If after applying the priorities set forth in subsection A above, more than one eligible applicant is still eligible for a particular site, the District will apply the weighted Criteria Matrix set forth below. The District will assign a score of between 1 and 10 in each category of the Criteria Matrix to each eligible charter school. The charter schools will be ranked by the score received. The charter school with the highest score will be given the right of first refusal for the facility. If the charter school with the highest score rejects the facilities, the facilities may be offered to a charter school with the next highest score, if, in the District's sole discretion, there is adequate time to prepare the facilities for allocation according to the timeline in Section IV above.

### *Criteria Matrix for Prop 39*

Criteria	Weight	Score
Ability of the project to provide overcrowding relief to one or more of the district's schools	40%	
Compatibility between the school program and the site	25%	
Compatibility between the location requested and the location available	5%	
Financial ability of the applicant school to support and improve site	20%	
Compatibility between the space requested and the space available	10%	
When programs are co-located on a single site, compatibility of the charter school's program and the existing District program		

#### **VII. OPERATIONS AND COMPLIANCE**

- A. Any facility allocated for use by a charter school shall be available for the charter school's entire school year regardless of the District's instructional year or class schedule. The District reserves the right to fully utilize facilities allocated to charter school at any time before and after a charter school's normal school hours. To the extent reasonably possible, the space will be contiguous, furnished and equipped. The charter school may not sublet the facility nor use it for purposes other than those that are consistent with District policies and practices and the use agreement between the District and the charter school, without written permission from the District.
- B. Facilities offered by the District to charter schools must be "reasonably equivalent" to the District-operated facilities. The District will consider "Capacity" and "Condition" (as those terms are defined in California Code of Regulations, Title 5, section 11969.3) in determining if the offered facilities meet the test of *reasonably equivalent*. Specifically, the District will consider, among other things, the following:

1. The size of the school site.
2. The condition of the structures and their conformity to applicable codes.
3. The condition of the interior and exterior surfaces.
4. The condition of the mechanical, plumbing, electrical and fire alarm systems.
5. The conformity of mechanical, plumbing, electrical and fire alarm systems to applicable codes.
6. The availability and condition of the technology infrastructure.
7. The suitability of the facility as a learning environment including, but not limited to, lighting, noise mitigation and size for intended use.
8. The manner in which the facility is furnished and equipped.
9. Whether there is sufficient classroom and non-classroom space to accommodate a charter school without causing overcrowding and creating an unfair burden on District operations and District-operated programs and students.

- C. In the case of a conversion charter school facility, there is an irrefutable presumption that the facility is "reasonably equivalent" during the first year of use by the charter school.

## VIII. COSTS

- A. Pro Rata Share of Facilities Costs: Every charter school that receives facilities from the District pursuant to a request under Education Code §47614 will be charged a pro rata share of the District's facilities costs. The following formula will be used to calculate a charter school's pro rata share of the District's facilities costs:

$$\text{Pro Rata Share} = \frac{\text{District facilities costs paid for with unrestricted general funds} \times \text{Space allocated to the charter school}}{\text{Total space of the District}}$$

1. Facilities costs include:
  - a. Costs associated with facilities acquisition, construction, rents and leases. This includes costs associated with capital projects such as acquiring land and buildings, remodeling and constructing buildings, installing or improving service systems, improving sites and the costs of renting or leasing facilities.
  - b. The contribution from the District's unrestricted general fund revenues to the District's deferred maintenance fund.
  - c. Costs from unrestricted general fund revenues for projects eligible for funding, but not funded from the deferred maintenance fund.

- d. Costs from unrestricted general fund revenues for the replacement of furnishings and equipment according to District schedules and practices.
  - e. Debt service costs.
2. The pro-rata share does not entitle a charter school to receive routine maintenance services from the District. A charter school may contract with the District for routine maintenance services under Section IXA of this policy.

**B. Space Allocated:**

1. When the District grants an entire campus to a charter school, the space allocated to the charter school will be computed using the "Total Space of the District" formula:

$$\text{Total square footage of a school lot} + \text{Total square footage of the building(s)} - \text{Total square footage of the first-floor "the footprint"} = \text{Total Space of the District}$$

2. When a District-operated school is sharing space with a charter school, there are two categories of space:
  - a. Space specifically allocated to one school or another; and
  - b. Shared space
3. The formula used to calculate the total space allocated on a shared campus is:

$$\text{Space allocated for the exclusive use of the charter school} + (\text{Total shared space} \times \text{Percentage of space allocated to the exclusive use of charter school}) = \text{Total space of the charter school}$$

4. Whenever common space, such as the school cafeteria, auditorium or athletic area, is shared by a charter school and a District-operated school, a use agreement signed by the District and the charter school shall guide the sharing of the facilities and define the relationship between the schools.

**C. Reimbursement for Over-Allocated Space:**

1. Charter schools have a statutory obligation to reimburse the District for over-allocated space (Ed. Code §47614 sub. (b) (2)). Space is considered "over-allocated" if:
  - a. The charter school's in-District classroom ADA is less than the projection on which the facility allocation was based, and
  - b. The difference is greater than or equal to 25 ADA or 10 percent of the projected in-District classroom ADA, whichever is greater. The greater of these two numbers is considered the "threshold ADA."
2. A charter school must immediately notify the District in writing when it appears it has over-allocated space. If the District opts to use the space it will notify the charter school within 30 days from the date that it received

notice of the over-allocated space. If the District uses this space, it will reduce the charter school's over-allocated space reimbursement. If the District declines to use the space, the charter school is responsible for the entire amount of the reimbursement.

## **IX. RELATED ISSUES**

### **A. Maintenance and Operations (M&O)**

1. The ongoing maintenance of facilities, fixtures, furnishings and equipment is the responsibility of the charter school. Projects included in the District's deferred maintenance plan and the replacement of furnishings and equipment supplied by the District will remain the responsibility of the District.
2. Maintenance services (custodial service, landscaping and gardening) may be obtained from the District on a fee-for-service basis. A charter school may also arrange for these services from a third party. Charter schools are required to comply with District M&O policies unless they receive a prior written waiver of a policy or policies.

### **B. Fixtures, Furnishings and Equipment (FFE)**

1. Under Ed. Code §47614, the District is required to provide charter schools with furnished and equipped facilities. The District has no obligation to provide the charter schools with new FFE and the District reserves the right to charge charter schools, on a pro rata basis, for debt service associated with purchasing FFE. The charter schools are responsible for maintaining an inventory of the FFE and providing a copy of the inventory to the District, upon request from the District. The FFE remains the property of the District.

### **C. Alterations and Improvements (A&I)**

1. All A&I projects will be funded by the charter school and require District, as well as all other necessary regulatory approvals, prior to commencement of any work. All A&I projects on District-owned land or in District-owned facilities become District property. Charter schools may request District A&I on a fee-for-service basis.

## **X. AUDIT AND INSPECTION**

The District reserves the right to, from time to time, audit and inspect facilities allocated to charter schools including, but not limited to, classrooms, non-classroom space, FFE, A&I projects (regardless of whether the A&I was funded by the District or a charter school), and any documents in the possession of or maintained by charter schools concerning the operation and maintenance of such facilities. Charter schools shall cooperate fully with any such audit or inspection. If the District determines that facilities have not been adequately maintained or an A&I project violated District policy, the District may, in its sole discretion, among other things, rehabilitate, modernize or otherwise cause the facilities to meet District policies and bill the charter school for the costs of bringing the facilities up to District policy standards. The District

may, among other things, deduct such costs from any funds the District may be required to forward to a charter school.

# EXHIBIT Q

FIRM / AFFILIATE OFFICES

Abu Dhabi	Milan
Barcelona	Moscow
Beijing	Munich
Boston	New Jersey
Brussels	New York
Century City	Orange County
Chicago	Paris
Dubai	Riyadh
Düsseldorf	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.

March 23, 2016

**VIA EMAIL AND FEDEX**

David Huff, Esq.  
Orbach, Huff, Suarez & Henderson, LLP  
1901 Avenue of the Stars, Suite 575  
Los Angeles, California 90067

**Re: California Charter Schools Association v. Los Angeles Unified School District,  
LASC Case No. BC438336: Preliminary Offers for the 2016-2017 School Year**

Dear David,

On behalf of CCSA, this concerns the Prop. 39 preliminary facility offers made by LAUSD for the 2016-2017 school year, including the revisions to those offers that LAUSD made to purportedly correct a “clerical error.” Despite the clarity of the Supreme Court’s opinion in this case, CCSA and its members are greatly disappointed that LAUSD continues to violate Prop. 39 and the Implementing Regulations.<sup>1</sup> Moreover, as you are aware, CCSA has gone to great efforts over the past several years to notify LAUSD of the many ways its Prop. 39 offers have continuously failed to comply with the law. Unfortunately, it appears that LAUSD has chosen to continue violating the law, depriving charter schools and the public school students they serve of the facilities to which they are entitled under Prop. 39 and the Implementing Regulations.

The following summarize the many ways in which LAUSD’s preliminary offers violate Prop. 39 and the Implementing Regulations.

**I. THE PRELIMINARY OFFERS’ LACK OF TRANSPARENCY MAKES IT IMPOSSIBLE TO VERIFY WHETHER LAUSD’S ALLOCATION OF CLASSROOMS TO CHARTER SCHOOLS COMPLIED WITH PROP. 39, THE IMPLEMENTING REGULATIONS, AND THE SUPREME COURT’S OPINION**

The preliminary offers fail to provide the detail required by Prop. 39 and the Implementing Regulations, and expressly mandated by *California Charter Schools Association v. Los Angeles Unified School District* (2015) 60 Cal.4th 1221 (*CCSA v. LAUSD*). Last year, the

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<sup>1</sup> Cal. Code Regs., tit. 5, §§ 11969.1 – 11969.11 (the “Implementing Regulations”).

Supreme Court held that the law requires LAUSD to follow three steps in responding to a charter school's Prop. 39 request for classroom space:

1. First, LAUSD must identify comparison group schools as outlined by section 11969.3(a) of the Implementing Regulations;
2. Second, LAUSD must count the number of classrooms in the comparison group schools *using the section 1859.31 inventory* and then adjust the number to reflect those classrooms "provided to" students in the comparison group schools in accordance with the Court's directions; and
3. Third, LAUSD must use the resulting number as the denominator in the average daily attendance ("ADA") to classroom ratio used to allocate classrooms to charter schools based on the charter schools' projected ADA.

(*CCSA v. LAUSD*, 60 Cal.4th at 1241.)

The Court further emphasized that the Implementing Regulations impose "a specific, *transparent* method for deriving the ADA/classroom ratio to be applied in allocating classrooms to charter schools, *thereby allowing charter schools and the public to readily verify*" whether LAUSD has complied with the law. (*CCSA v. LAUSD*, 60 Cal.4th at 1236, emphasis added.) Because the school district maintains all of the information about its school sites, the classroom make-up and usage at those school sites, and the average daily attendance of the non-charter school students attending the comparison group schools, a charter school should not be forced to "compel the District through litigation to demonstrate reasonable equivalence." (*Ibid.*)

Accordingly, LAUSD's calculation of the ADA/classroom ratio for each charter school's facilities request must be done in a very transparent fashion. As we explained in the letter we sent you on October 16, 2015, for that to happen in regard to the allocation of classrooms to charter schools, LAUSD's Prop. 39 offers must spell out the following in detail:

1. Identify the comparison group schools;
2. Count the number of classrooms in the comparison group schools from *the section 1859.31 inventory*—attaching portions of the inventory applicable to the comparison group schools to enable CCSA and its members to readily verify that the correct numbers were used; and
3. *Identify in detail the classrooms that LAUSD asserts are not "provided to" district students and therefore subtracted from the number of classrooms counted at the comparison group schools, including its basis for excluding those classrooms.*

Unfortunately, the information provided regarding the classroom make-up at the comparison group schools listed in the preliminary offers does not provide the level of detail required by Prop. 39, the Implementing Regulations, and the Supreme Court's opinion. Because of that CCSA and its member schools have no way of verifying whether LAUSD has allocated

classrooms to charter schools in accordance with law. The Supreme Court's opinion is clear that the burden is on LAUSD to provide that information, not on CCSA or its member schools to have to engage in discovery to obtain it. The following describes the many ways LAUSD's preliminary offers lack the transparency required to demonstrate reasonable equivalence.<sup>2</sup>

**A. The Gross Classroom Inventory is Over Fifteen Years Old and Is Not Representative of Current Conditions at the Comparison Group Schools**

The gross classroom inventory list included in LAUSD's analysis is outdated and thus does not allow sufficient verification of the legality of the preliminary offers. Under the Implementing Regulations, LAUSD must determine the number of classrooms at comparison group schools using the inventory. (Cal. Code Regs., tit. 5, § 11969.3(b)(1) ["The number of teaching stations (classrooms) *shall be determined* using the classroom inventory prepared pursuant to California Code of Regulations, title 2, section 1859.31," emphasis added.] Section 1859.31 states that "[t]he district *shall prepare* a gross inventory consisting of all classrooms owned or leased in the district." (Cal. Code Regs., tit. 2, § 1859.31, emphasis added.)

Here, the "classroom inventory" attached to the preliminary offers is a document dated April 26, 2001. Almost fifteen years have passed since this list was compiled. There can be no dispute that over the past fifteen years, LAUSD has constructed hundreds of schools and thousands of classrooms as a result of its nearly \$20 billion school construction and modernization efforts. Thus, this purported inventory document does not accurately reflect current classroom space at LAUSD school sites and does not allow CCSA or the public to verify that the classroom ratio has been properly established as required by the Implementing Regulations.

Moreover, by referencing section 1859.31 of the regulations implementing the Greene Act, which states that LAUSD "shall prepare" the inventory, rather than section 1859.30 of those regulations, the Prop. 39 Implementing Regulations impose an affirmative requirement on LAUSD to ensure that its inventory is up to date and current. This is borne out by examining the regulatory history of the Implementing Regulations and the Supreme Court's opinion.

As originally adopted in 2002, the Implementing Regulations stated that "[t]he number of teaching stations shall be determined using the classroom inventory prepared pursuant to section 1859.30 of Title 2 of the California Code of Regulations, adjusted to exclude classrooms identified as interim housing." (Former Cal. Code Regs., tit. 5, § 11969.3(b)(1) (adopted 2002), emphasis added.) Section 1859.30 states:

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the Form SAB 50-02.

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<sup>2</sup> Moreover, CCSA agrees with the concerns regarding the classroom allocation in the preliminary offers raised by many charter schools in those schools' March 1, 2016, responses to the preliminary offers. CCSA incorporates by reference those concerns into this letter.

Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

Based on the above, an inventory for new construction projects is required to be completed “on a one-time basis.” However, in 2007 the State Board of Education amended the Implementing Regulations, replacing the reference to section 1859.30 with section 1859.31. This is clear regulatory intent that the State Board of Education did not intend other sections of the Greene Act regulations to be applicable to the Prop. 39 process, except for section 1859.2, a definitions section which is also referenced in Implementing Regulations section 11969.3(b)(1). (See *CCSA v. LAUSD*, 60 Cal.4th at 1238-1239 [rejecting CCSA’s interpretation of regulation to incorporate into section 1859.31 any reference to the adjustments set forth in section 1859.32].)

Accordingly, reading Implementing Regulations section 11969.3(b)(1) and Greene Act regulations section 1859.31 together, the plain language makes clear that for the Prop. 39 process, LAUSD must use a current gross classroom inventory that includes all of the classrooms listed in section 1859.31 *for the forthcoming school year*. LAUSD’s inclusion of a 2001 Form SAB 50-02 document with its Prop. 39 preliminary offers for the 2016-2017 school year as the purported “classroom inventory” does not comply with the Implementing Regulations. CCSA demands that LAUSD prepare a current inventory of classrooms at its school sites as the Implementing Regulations require.

**B. LAUSD’s Determination of What Classrooms Are Considered in the ADA/Classroom Ratio Lacks Transparency**

LAUSD has not provided sufficient information regarding its calculation of classroom space. In Attachment B to the preliminary offers, LAUSD defines “Total Standard Size Classrooms” to mean “all *standard size* teaching stations (classrooms) at Charter School’s comparison group schools, per California Code of Regulations, title 2, section 1859.31, excluding classrooms identified as interim housing. (Emphasis added.) As an initial point, LAUSD has no justification or basis for reading into the regulation the term “standard size.” The regulation is clear that *all* classrooms at LAUSD’s school sites are to be counted. (Cal. Code Regs., tit. 5, § 11969.3(b)(1); Cal. Code Regs., tit. 2, § 1859.31.)

It is only in determining what classrooms are “provided to” students in the comparison group schools when LAUSD may remove from the calculation of the ADA/classroom ratio those classrooms that are not genuinely “provided to” those students. (*CCSA v. LAUSD*, 60 Cal.4th at 1241.) As CCSA understands that many LAUSD school sites contain “non-standard” or “small” classrooms, CCSA will be forced to propound discovery on LAUSD to obtain more information of the classroom make-up at LAUSD school sites, including classroom sizes and usage.

Next, in Attachment B to the preliminary offers, LAUSD defines “Total Classrooms Provided for Instruction” to mean:

Total Standard Size Classrooms, adjusted to reflect those classrooms provided to non-charter public school graded K-12 students in LAUSD. Unbuilt classrooms, classrooms already used

by and/or identified for occupancy by charters schools, out-of-service or unassigned classrooms, and classrooms dedicated to preschool, adult education, special education, school police, or other uses besides graded K-12 education, and specialized classroom space and nonteaching station space accounted for under California Code of Regulations, title 5, sections 11969.3(b)(2) and (b)(3), are not included.

The list and description of comparison group schools attached to the preliminary offers contain only two numbers for the total numbers of classrooms at those schools: the “Total Standard Size Classrooms” and the “Total Classrooms Provided for Instruction.” An example is provided below. The preliminary offers fail to describe those classrooms that LAUSD subtracted from the ADA/classroom ratio as “classrooms” that are *not* “provided to non-charter public school graded K-12 students in LAUSD.”

COMPARISON GROUP SCHOOLS – CAPACITY (CALIFORNIA CODE OF REGULATIONS, TITLE 5, SECTION 11969.3 (b))  
FOR CITY CHARTER MIDDLE SCHOOL

School Name	State District	Local District	MS Config	Grades	Calendar (Weeks)	Days	Total Standard Size Classrooms	Total Classrooms Provided for Instruction	ADA Ratio	ADA per Classroom provided
Emerson CC	4	West	UNIVERSITY SH	6-8	1	J	34	20	575.84	28.79
Richland Ave EI	4	West	UNIVERSITY SH	K-6	1	E	27	11	232.31	21.12
Webster MS	4	West	UNIVERSITY SH	6-8	1	J	56	17	385.42	22.67

ADA to classrooms provided at comparison group schools:

24.19

For instance, among other types of classrooms, the offers indicate that LAUSD did not include “out-of-service or unassigned classrooms” in the calculation of the ratio. LAUSD provides no back-up information that would allow the public, CCSA, and CCSA’s member charter schools to understand the number of each of the various types of classrooms excluded from each comparison group school chosen for the preliminary offers. That information is necessary for the public, CCSA, and CCSA’s member charter schools to understand whether LAUSD has complied with Prop. 39 and the Implementing Regulations. In other words, with the limited information provided in the preliminary offers, there is no way to verify that the excluded classrooms are not being used for K-12 educational purposes and were properly ignored. That violates Prop. 39. See *Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal.App.4th 1022, 1030, 1064 [holding that a district violates Prop. 39 when it fails to make a “complete and fair” facilities offer to the charter school, including making “a good faith effort to consider and accurately measure *all* of the facilities of the comparison group schools”], emphasis in original.)

Moreover, as the Supreme Court recognized, determining whether a classroom has been “provided to” non-charter K-12 public school students is highly fact and location specific. (See *CCSA v. LAUSD*, 60 Cal.4th at 1241 [“Resolving which classrooms are ‘provided to’ district

students for purposes of calculating the ADA/classroom ratio for a particular school may depend on site-specific factors.”].) In addition, “counting classrooms ‘provided to’ district students for the purposes of section 11969.3(b)(1) is not the same as counting only those rooms a district elects to staff with a teacher.” (*Id.*)

Because LAUSD has failed to provide the information required to make these site-specific determinations, which CCSA made clear in its October 16, 2015, letter was necessary to comply with the Supreme Court’s opinion, CCSA feels that it has no choice but to propound discovery on LAUSD in order to visit the physical locations to determine whether LAUSD has any basis to conclude that various classrooms at the comparison group schools are not “provided to” non-charter K-12 public school students. Because of LAUSD’s failure to comply with law, without site visits, CCSA has no way to verify that LAUSD has fulfilled its obligations in determining which classrooms must be counted.

In addition, based on our review of the preliminary offers, as well as LAUSD’s “capacity roadshow” documents, some of which CCSA has obtained,<sup>3</sup> CCSA understands that LAUSD excluded special education classrooms from the denominator in the ratio, but included special education students in the determination of the ADA at the comparison group schools. CCSA is unclear as to why Prop. 39 and the Implementing Regulations would permit such an approach to the ADA/classroom ratio, and plans to propound discovery on LAUSD to obtain more information regarding these issues.

Further, as CCSA has been clear in the past, CCSA is concerned that LAUSD may be hiding classroom space in the Prop. 39 process by designating those classrooms for wasteful purposes such as storage, lounges, or other uses. By failing to include detailed information in the preliminary offers showing what classrooms (and why) were excluded from the ADA/classroom ratio, CCSA is forced to conclude that LAUSD does not want that information being made public. This lack of transparency suggests that LAUSD is hiding things, and that it is continuing to violate Prop. 39 and the Implementing Regulations by “counting only those classrooms staffed by an assigned teacher[, which] would effectively impute to charter schools the same staffing decisions made by the district.” (*CCSA v. LAUSD*, 60 Cal.4th at 1241.)

Because LAUSD failed to provide the level of transparency required by law in the preliminary offers, CCSA now finds itself in a position where it has no choice but to use the discovery process to perform physical inspections of LAUSD school sites to determine whether LAUSD’s offers included the legally required number of classrooms in determining the ADA/classroom ratio at the comparison group schools, and whether any particular classrooms excluded from the analysis should have been included in the ratio.

Enclosed with this letter are site inspection demands that CCSA is serving on LAUSD pursuant to Code of Civil Procedure section 2031.010(d). While the lack of transparency in the comparison group schools analysis is apparent in every preliminary offer, CCSA has identified

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<sup>3</sup> The capacity roadshow documents are not attached to the offers, but CCSA is informed and believes that those documents may have formed the basis for LAUSD’s creation of the purported ADA/classroom ratios at the comparison group schools.

twelve (12) key LAUSD school sites, and pursuant to the site inspection demands served concurrently with this letter, would like to schedule site inspections at those 12 sites, which are listed below:

1. Cienega Elementary School;
2. Cochran Middle School;
3. Dymally High School;
4. Elizabeth Learning Center;
5. Fremont High School;
6. La Salle Elementary School;
7. Logan Elementary School;
8. Los Angeles Academy Middle School;
9. Pacoima Middle School;
10. Placentia Elementary School;
11. South Gate Middle School; and
12. Venice High School.<sup>4</sup>

As explained in the site inspection demands, during the site visits CCSA expects to be accompanied by those LAUSD employees with the most knowledge of the facility. CCSA also requests and expects that inspections will occur within two weeks after LAUSD's responses to the site inspection demands are due – i.e., in late April or early May.

If LAUSD is unwilling to accommodate the requested site inspections promptly, given the timeframe CCSA has under the Court's June 25, 2015, order to file a motion for summary adjudication, CCSA may be forced to apply *ex parte* for an order compelling LAUSD to make the sites available for inspection as soon as possible.

## **II. LAUSD'S CONDITIONS ON THE USE OF SCIENCE LABORATORY SPACE BY CHARTER SCHOOLS VIOLATES THE IMPLEMENTING REGULATIONS**

Many of the preliminary offers propose to give charter schools shared use of science laboratory classroom space. However, LAUSD puts many unlawful conditions on the potential use of that space in violation of Prop. 39 and the Implementing Regulations.

Section 11969.3(b)(2) of the Implementing Regulations provides that "[i]f the school district includes specialized classroom space, such as science laboratories, in its classroom inventory, the space allocation provided pursuant to paragraph (1) subdivision (b) shall include a share of the specialized classroom space and/or a provision for access to reasonably equivalent specialized classroom space." (Cal. Code Regs., tit. 5, § 11969.3(b)(2).) The offer of specialized classroom space must be based on three factors: "(A) the grade levels of the charter school's in-district students; (B) the charter school's total in-district classroom ADA; and (C) the per-student amount of specialized classroom space in the comparison group schools." (*Id.*)

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<sup>4</sup> CCSA is also enclosing with this letter document requests seeking various documents related to or associated with these 12 school sites. Further, CCSA plans on serving special interrogatories on LAUSD within the next few days.

In the preliminary offers, LAUSD has offered to provide shared science laboratory classroom space to charter schools, but only “to the extent it does not prohibit: (1) the District school from meeting the education requirements mandated by Education Code sections 51220, 51225.3 subdivisions (a)(1)(C), and 51228 subdivision (a); and (2) does not prohibit the students attending the District school from meeting the minimum graduation requirements of 10 credits of biological science and 10 credits of physical science and [the minimum college admissions requirements.]” Section 11969.3(b)(2) does not allow LAUSD to assess such considerations when allocating specialized classroom space. The regulations are clear that the only considerations LAUSD are to take into account are the three factors laid out in Implementing Regulations section 11969.3(b)(2)(A) to (C).

Moreover, LAUSD has placed significant conditions on its laboratory space offers. For instance, LAUSD reserves the right to require charter schools to allow district students to use classrooms reserved exclusively for charter school use. These conditions could have a major effect on the actual amount of laboratory space made available to the charter schools.

Similarly, LAUSD treats laboratory space as “exclusive use teaching stations.” The preliminary offers explain that “should Charter School elect to use its allocated share of the science laboratory classroom space, Charter School’s exclusive use teaching space allocation will be reduced by an amount equivalent to its science laboratory classroom space allocation.” Nothing in the Implementing Regulations allows LAUSD to penalize charter schools by reducing their exclusive use classroom space simply because they have exercised their right to specialized classroom space.

In sum, LAUSD’s offers of science laboratory space do not comply with the law.

### **III. LAUSD CANNOT UNILATERALLY DENY CHARTER SCHOOLS THE ABILITY TO ACCESS KITCHEN SPACE AT LAUSD SCHOOL SITES**

As we have discussed in past Prop. 39 offer cycles, LAUSD continues to assert that it cannot allow charter schools to physically occupy kitchens at LAUSD school sites. LAUSD states that “doing so would be impracticable in that it would prevent the District from complying with local, state and federal requirements regarding the provision of food services to public school students.” The offers do not state what those requirements are, and why meeting them is made impracticable or impossible by LAUSD agreeing to share kitchen space with charter schools. The law is clear that “impossibility” or “impracticability” must lie in the nature of the thing to be done, and not just in a party’s incompetence to do it. (*Hensler v. City of Los Angeles* (1954) 124 Cal.App.2d 71, 83.) Moreover, as in prior Prop. 39 offer cycles, LAUSD continues to provide no substantiation for its claim that charter schools “do not possess a valid food permit or certification from the applicable enforcement agency for the kitchen at the proposed school site(s)” nor why they could not obtain one.

Prop. 39 is clear that LAUSD is obligated to “allocate and/or provide access to non-teaching station space, [which] . . . includes, but is not limited to . . . kitchen.” (Cal. Code Regs., tit. 5, § 11969.3(b)(3).) As such, CCSA requests that LAUSD explain, in detail, why it refuses to

provide shared use of kitchen space, and why such a refusal is specifically permitted under Prop. 39.

#### **IV. LAUSD'S MULTI-SITE OFFERS VIOLATE PROP. 39 AND THE IMPLEMENTING REGULATIONS BECAUSE THEY ARE BASED ON FLAWED FINDINGS**

Out of the 96 charter schools that applied to LAUSD for school facilities pursuant to Prop. 39, a full 25 percent (or 24) of those schools received multi-site offers, including 8 schools with offers across three or more school sites. As CCSA explained in a January 12, 2016, letter to the Board, the Board's findings regarding multi-site offers do not comply with Prop. 39 and the Implementing Regulations. CCSA does not repeat here the many reasons why the multi-site offers violate the law described in CCSA's January 12 letter. Suffice it to say that CCSA is very disappointed by LAUSD's inability and refusal to make more offers at single school site.

#### **V. OTHER CONCERNS WITH PRELIMINARY OFFERS AND LAUSD'S PROP. 39 PROCESS**

Aside from the issues described above, the preliminary offers also suffer from various other legal deficiencies, including but not limited to:<sup>5</sup>

Failure to Make Reasonable Efforts To Provide Facilities Near Where Charter Schools Wish To Locate. Prop. 39 mandates that "[t]he school district shall make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate . . . ." (Ed. Code, § 47614(b).) Despite that requirement, many charter schools have been offered facilities several miles away from where they wish to be located, in violation of Prop. 39 and the Implementing Regulations.

If LAUSD Offered Only Excess Space To Charter Schools, LAUSD's Preliminary Offers Are In Violation Of Prop. 39. The preliminary offers also violate Prop. 39 to the extent that LAUSD's approach gives a facilities preference to district-run schools, which are free to take whatever facilities they want, and gives students attending charter schools only excess space. Prop. 39 requires school districts to "make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district." (Ed. Code, § 47614(b).) A school district's actions "in responding to a Proposition 39 facilities request must comport with the evident purpose of the Act to equalize the treatment of charter and district-run schools with respect to the allocation of space between them." (*Ridgecrest Charter School v. Sierra Sands Unified School Dist.* (2005) 130 Cal.App.4th 986, 1002 (*Ridgecrest*).)

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<sup>5</sup> As with the concerns regarding classroom allocation, CCSA incorporates by reference all of the other concerns raised by charter schools in their March 1, 2016, responses to LAUSD's preliminary offers.

“[T]o the maximum extent practicable, the needs of the charter school must be given the same consideration as those of the district-run schools, subject to the requirement that the facilities provided to the charter school must be “contiguous.” (*Ridgecrest*, 130 Cal.App.4th at 1002, emphasis added.) “[S]ome disruption and dislocation of the students and programs in a district may be necessary to fairly accommodate a charter school’s request for facilities.” (*Id.* at 1000.) To the extent LAUSD has continued its practice of giving only excess space to charter schools that violates the law. (See Ed. Code, § 47614, subd. (a).)

LAUSD Continues To Calculate The Pro Rata Share Inappropriately. As has been the case for years now, the preliminary offers continue to include inappropriate charges in the facilities costs used to calculate each charter school’s pro rata share, leading to overcharges for use of LAUSD facilities under Prop. 39.

Charter School Office Non-Responsiveness. Compounding the problems presented by LAUSD’s inadequate preliminary offers and defective calculations is the fact that LAUSD’s charter school office has been much more uncooperative with charter schools than it has been in the past. CCSA understands that many charter schools with concerns and questions about their preliminary offers have reached out to LAUSD’s charter school office, but have been ignored. For instance, CCSA understands that at least one charter school has learned that the school principal at the school site where charter school has been offered space now claims that there is insufficient capacity to accommodate the charter school, and that LAUSD may be changing the final offer to a different school site or revoking the offer completely. Despite learning this, the charter school has been provided no information from LAUSD’s charter schools office about alternate plans to accommodate the school. Situations like this cannot continue to occur. CCSA requests that LAUSD use good faith efforts to address concerns of charter schools.

## VI. CONCLUSION

CCSA is very disappointed with LAUSD’s preliminary offers, most notably with the lack of transparency in the classroom allocation and the failure to provide the necessary information in the offers so that charter schools and the public can understand whether LAUSD has provided reasonably equivalent facilities. We hope that these issues are addressed and rectified in LAUSD’s final offers, or CCSA will have no choice but to file a motion for summary adjudication of its eighth cause of action.

Very truly yours,



Winston P. Stromberg  
of LATHAM & WATKINS LLP

Enclosures

cc: Ricardo Soto, California Charter Schools Association  
Phillipa L. Altmann, California Charter Schools Association  
James L. Arnone, Latham & Watkins LLP

**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 355 South Grand Avenue, Los Angeles, CA 90071-1560.

I served the following document described as:

**CORRECTED FIRST AMENDED AND SUPPLEMENTAL COMPLAINT FOR  
BREACH OF SETTLEMENT AGREEMENT AND VIOLATION OF PROPOSITION 39 SEEKING  
SPECIFIC PERFORMANCE, PERMANENT INJUNCTION, APPOINTMENT OF SPECIAL MASTER  
AND DECLARATORY RELIEF**

by serving a true copy of the above-described document in the following manner:

**BY ELECTRONIC MAIL**

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The above-described document was transmitted via electronic mail to the following party(ies) on  
**June 1, 2016:**

David M. Huff, Esq.  
Marley S. Fox, Esq.  
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The party on whom this electronic mail has been served has agreed in writing to such form of service pursuant to agreement.

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **June 1, 2016**, at Los Angeles, California.



Winston P. Stromberg

**From:** Stromberg, Winston (LA)  
**Sent:** Wednesday, June 01, 2016 12:06 PM  
**To:** David M. Huff; Marley Fox; mark.fall@lausd.net; Nathan A. Reiersen (nathan.reiersen@lausd.net)  
**Cc:** Arnone, James (LA); Quass, Lucas (LA); Phillipa Altmann  
**Subject:** CCSA v. LAUSD: corrected amended and supplemental complaint

Counsel:

The attached corrected amended and supplemental complaint is being filed today, and this email constitutes service thereof pursuant to our agreement to serve documents electronically. As I mentioned in my email yesterday, when we ran the redline of the amended and supplemental complaint against the original complaint, we noticed that a paragraph from the original complaint had been erroneously deleted in the amended and supplemental complaint. This corrected version restores that erroneously deleted paragraph.

Also attached - at your request - is a redline comparing this document to the original complaint.

Regards,

Winston



Connected First CCSA v. LAUSD -  
Amended Supp... complaint v. c...

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